



Korean Legislation and Case Law towards Implementing the CRPD



Dr. Jang, Min-young
(Korea Legislation Research Institute)

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1. Korea - CRPD

Ratification

- Korea became the member state of the CRPD on Dec. 11, 2008 but is not a contracting party to the Optional Protocol of the CRPD which provides the individual communication procedures with regard to the CRPD.



Initial State Reporting Procedure

- Korea submitted its initial report on June 11, 2011 and the Committee on the Rights of the Persons with Disability (hereinafter “Committee”) published the concluding observations on Oct. 28, 2014.



2nd State Reporting Procedure

- Korea submitted the combined 2nd and 3rd report on Mar. 27, 2018 and the consideration concerned will be held at the end of 2019.

Accessibility

The Committee is concerned about the **low number of accessible buses and taxis in rural and urban areas**. It is also concerned that accessibility **standards for buildings** are restricted by minimum size, capacity and date of construction and have not yet been applied to all public buildings. The Committee is further concerned that **many websites remain inaccessible for persons with visual impairment**, and that web accessibility catering for each disability type, such as hearing impairment and intellectual and psychosocial disabilities, remains weak.

The Committee recommends that the State party **review current public transportation policies**, with a view to ensuring that persons with disabilities can use all types of public transportation safely and conveniently. It encourages the State party to **apply accessibility standards to all public facilities and workplaces**, regardless of their size, capacity or date of construction, in accordance with article 9 of the Convention and the Committee's general comment No. 2 (2014) on accessibility. The Committee further recommends that the State party amend the relevant laws to ensure that **all persons with disabilities can gain access to information via Internet websites** on an equal basis with others, and facilitate access to smart phone s for persons with visual and other impairments.

Work and Employment

The Committee is concerned that **the Minimum Wage Act excludes from the benefit of the minimum wage “those who clearly lack the capacity to work”** and fails to set clear standards for conducting assessments and making decisions to define the lack of capacity to work. The Committee is also concerned that, as a result, many persons with disabilities who work, especially those with psychosocial disabilities, receive **compensation below the minimum wage**, and that the practice of placing such workers in sheltered workshops that do not aim to prepare them for entry into the open labour market continues.

The Committee encourages the State party to **introduce a supplementary wage system** to compensate those persons with disabilities who are excluded from the benefit of the minimum wage by the Minimum Wage Act and to **eliminate sheltered workshops and seek alternatives** in line with the Convention to promote the employment of persons with disabilities in close consultation with organizations of persons with disabilities.

The Committee recommends that the State party put in place measures to narrow the employment gap, paying particular attention to the employment of women with disabilities. It recommends, in particular, that the State party **ensure the effective implementation of the mandatory employment quota system** for persons with disabilities and the publication of relevant statistics on the achievements and results in that area.

Adequate Standard of Living and Social Protection

The Committee is concerned that the National Basic Living Security Act excludes from the benefit of minimum living support those persons with disabilities whose family members have a certain amount of income or property. It is also concerned that eligibility for the minimum living support benefit is based on the existing disability grading system and is limited to “persons with severe disabilities”.

The Committee recommends that the State party **grant the minimum living support benefit on the basis of the personal characteristics**, circumstances and needs of persons with disabilities, rather than on the basis of the disability grading system and on the income and property of their family.

Participation in Political Life and Public Life

The Committee is concerned that many polling booths are not fully accessible to persons with disabilities and that voting information is not provided to persons with disabilities in consideration of the various types of disabilities. It is also concerned about the low level of participation of persons with disabilities in political activities and as candidates in elections due to the barriers that they continue to face in that regard. It is also concerned that persons declared incompetent are denied the right to vote and stand for elections.

The Committee recommends that the State party step up its efforts to ensure that voting is fully accessible to all persons, irrespective of disability, and that voting information is provided in all accessible formats. It further recommends that the State party **take specific measures to promote the participation of persons with disabilities in elected bodies**. It also recommends that the State party repeal provisions denying the right to vote and stand for elections and provide the right to vote and stand for elections regardless of type of disability.

Freedom from Exploitation, Violence and Abuse

The Committee is concerned that **persons with disabilities continue to face violence, abuse and exploitation, including forced labour**. It is also concerned about the failure of the State party to punish the perpetrators and provide reparation to the victims, and about the absence of shelters for persons with disabilities other than those who are victims of sexual and domestic violence.

The Committee urges the State party to investigate all cases of violence, exploitation and abuse experienced by persons with disabilities both inside and outside institutional settings ; to **ensure that the perpetrators are punished and the victims receive reparation** ; and to provide accessible shelters for persons with disabilities who are victims . The Committee recommends, in particular, that the State party strengthen its investigations into the incidents of forced labour of persons with disabilities and provide the victims with adequate protection.

2. Korean Legislation on the Rights of the Disabled

General Protection

- Constitution
- Medical Service Act / Medical Care Assistant Act / Long Term Care Insurance Act
- Elementary and Secondary Education Act, Child Care Act, Child Welfare Act
- Employment Security Act, Employment Insurance Act, Industrial Accident Compensation Insurance Act
- National Basic Living Security Act, National Pension Act, Welfare for Older Persons Act, Child Benefit Act
- Criminal Act / Act on the Prevention of Domestic Violence and Protection, etc. of Victims / Sexual Violence Prevention and Victims Protection Act

Special Protection

- **Act on Welfare of Persons with Disabilities**
- **Act on the Prohibition of Discrimination against Persons with Disabilities**, Remedy against Infringement of their Rights, etc.
- Act on Promotion of the Transportation Convenience of Mobility Disadvantaged Persons
- Act on Welfare Support for Children with Disability
- Act on Guarantee of Rights of and Support for Persons with Developmental Disabilities
- Act on Special Education for Persons with Disabilities, etc.
- Act on the Support for Assistive Devices for Persons with Disabilities, Older Persons, etc. and Promotion of Use thereof
- Act on Guarantee of Promotion of Convenience of Persons with Disabilities, the Aged, Pregnant Women, etc.
- Act on Activity Assistant Services for Persons with Disabilities
- Act on Guarantee of Right to Health and Access to Medical Services for Persons with Disability
- Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disability
- Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities
- Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities
- Special Act on the Preferential Purchase of Products Manufactured by Persons with Severe Disability

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Article 9 of the CRPD

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:
 - (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
 - (b) Information, communications and other services, including electronic services and emergency services.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Article 9 of the CRPD

2. States Parties shall also take appropriate measures to:

- (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Fact of the Case

Constitutional Court 2002 Heon Ma 52 (Dec. 18, 2002)

- ✓ On Jan. 2001, a disabled man died because he fell down from a vertical wheelchair lift at the subway stairs.
- ✓ The NGO for advocating disabled persons' rights requested the Minister of Health and Welfare to introduce low-floor bus in order to guarantee accessibility for disabled persons. The request was not accepted for various reasons.
- ✓ The NGO complained to the Constitutional Court that the nonfeasance of the Minister violated the rights of the disability to pursue happiness and to lead a life worthy of human dignity protected under the Korean Constitution.



3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Domestic Law concerned with the Case

Constitution

Article 10

All citizens shall be assured of human worth and dignity and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.

Article 34

- (1) All citizens shall be entitled to a life worthy of human beings.
- (2) The State shall have the duty to endeavor to promote social security and welfare.
- (3) The State shall endeavor to promote the welfare and rights of women.
- (4) The State shall have the duty to implement policies for enhancing the welfare of senior citizens and the young.
- (5) Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by Act.
- (6) The State shall endeavor to prevent disasters and to protect citizens from harm therefrom.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Domestic Law concerned with the Case

Act on Guarantee of Promotion of Convenience of Persons with Disabilities, the Aged, Pregnant Women, etc.

Article 4 (Right to Access) Persons with disabilities, etc. shall have the right to use facilities and equipment which persons with no disabilities use, on equal terms and to have free access to information, in order to guarantee the right to pursue humane dignity, value, and happiness

Article 7 (Target Facilities) Targets for installing amenities (hereinafter referred to as "target facilities") **shall** be any of the following, prescribed by Presidential Decree::

1. Parks;
2. Public buildings and public facilities;
3. Multi-family housing;
4. Communication facilities;
5. Other buildings, facilities, and appurtenances in which amenities are required to be installed for the convenience of persons with disabilities, etc..

Article 13 (Support for Installation of Amenities)

- (1) **The State and local governments shall take necessary measures, such as financial and technical support, to mitigate private sectors' burdens** from installing amenities and to promote installing the same.
- (2) Where a corporation or individual has installed amenities prescribed in this Act, a tax imposed on expenses incurred in installing amenities shall be reduced or exempted, as prescribed by tax-related statutes, such as the Restriction of Special Taxation Act and the Restriction of Special Local Taxation Act.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Holding

- ✓ With regard to the constitutional complaint, it is **an established a principle that nonfeasance of the administrative is unconstitutional only if the authority concerned does not implement the obligation which is clearly and materially** prescribed under the Constitution or the related act.
- ✓ It is true that Articles 10 and 34(1) of the Constitution providing the right to pursue happiness and the right to lead a life worthy of human dignity announce the protection of rights and freedoms of vulnerable groups including the disabled. However, **these Articles permit arbitration of the Legislative and the Administrative to implement such protection.** Consequently, the provisions do not lead to the duty of the Minster to operate low-floor buses.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Criticism and Improvement

The constitutional complaint has **provoked social controversies** on and been forming social consensus on low-floor buses, the guarantee of disability and, further, the rights of persons with disability in Korean society.

In 2006, **the Act on Promotion of the Transportation Convenience of Mobility Disadvantaged Persons was newly enacted**. This Act mainly aims at protecting and realizing accessibility for vulnerable groups regarding transportation such as the disability, pregnant women and the aged. It prescribes operation of special transportation measures, installation of convenient mobility equipment, and designation of pedestrian priority zones, etc.

In particular, the Act provides the Article to guarantee the use of buses including operation of low-floor buses.



Article 9 (Facilities subject to Installation of Convenient Mobility Equipment) Facilities in which convenient mobility equipment is to be installed (hereinafter referred to as "facilities subject to installation") shall be any of the following prescribed by Presidential Decree:

1. Any means of transportation; /
2. Passenger facilities; /
3. Roads.

Article 10 (Installation Standards for Convenient Mobility Equipment) (1) The kind of convenient mobility equipment to be installed in each facility subject to **installation shall be prescribed by Presidential Decree** considering the scale, use, etc. of such facility.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility

Criticism and Improvement

The Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of their Rights, etc. was enacted in 2008 and the right of disabled persons to accessibility has been provided



Article 19 (Prohibition of Discrimination in Means of Mobility, Transportation, etc.)

- (1) No transportation business operator (hereinafter referred to as "transportation business operator") and transportation administrative agency (hereinafter referred to as "transportation administrative agency") under subparagraphs 5 and 6 of Article 2 of the Act on Promotion of the Transportation Convenience of Mobility Disadvantaged Persons may restrict, segregate, exclude or reject the disabled persons from gaining access to and using means of mobility, transportation, etc.
- (2) No transportation business operator and transportation administrative agency may reject the disabled persons accompanying, bringing in, or using guide dogs or auxiliary equipment for disabled persons, etc. when they use means of mobility, transportation, etc.
- (3) No transportation business operator and transportation administrative agency may apply a fare system disadvantageous to the disabled persons or persons related to the disabled using means of mobility, transportation, etc. based on disability, guide dogs or auxiliary equipment for disabled persons, etc. that accompany or guide them.

3. Korean Cases on the Rights of the Disabled

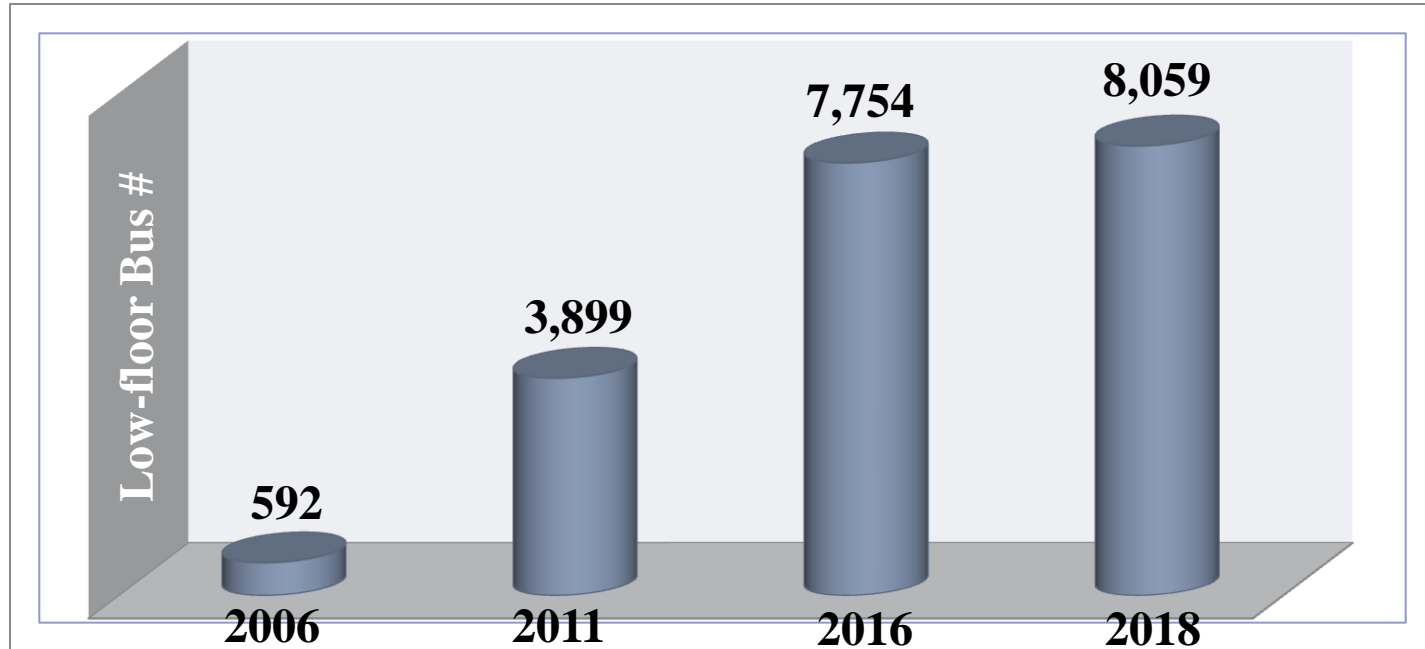
(1) Accessibility

Article 19 (Prohibition of Discrimination in Means of Mobility, Transportation, etc.)

- (4) Each transportation business operator and transportation administrative agency shall provide legitimate convenience necessary to allow the disabled persons to use means of mobility, transportation, etc. on an equal basis with persons without disabilities so that they can walk and move safely and conveniently.
- (5) Each transportation administrative agency shall promote, educate, support and supervise transportation business operators so that they may not engage in any discriminatory act set forth in this Act against the disabled persons.
- (6) The State and local governments shall not restrict, segregate, exclude or reject the disabled persons in all processes associated with applying for, taking and passing the driver's license examination without justifiable grounds.
- (7) The State and local governments shall provide legitimate convenience to the disabled persons so that they can go through every required process for the driver's license examination on an equal basis with persons without disabilities.
- (8) In applying paragraphs (4) and (7), necessary matters, such as the scope of applicable entities for each phase of implementation and the details of legitimate convenience, shall be prescribed by Presidential Decree.

3. Korean Cases on the Rights of the Disabled

(1) Accessibility



Criticism and Improvement

However, accessibility is not fully protected in Korea. With regard to low-floor buses, the provision concerned is mandatory but there is no compulsory measure in case of violation. Moreover, the policy concerned focuses only on regular intra-city bus. Shuttle buses operated at small rural areas and inter-city buses have not been discussed yet.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Article 27 of the CRPD

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Article 27 of the CRPD

- (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Fact of the Case

Constitutional Court, 2001Heon Ba 96 (2003. 7. 24.)

The former **Act on the Promotion of Employment of Disabled Persons Act** requires a certain employer to hire disabled individuals more than the rate set forth by the presidential decree. Pursuant to the Enforcement Decree of the Act, an employer normally and constantly employing three-hundred employees or more must employ disabled individuals at or over the rate of two-hundredths of the entire number of employees. If the employer employ a higher rate of disabled persons, such employer receives an employment subsidy. **If the employer fails to meet the above employment rate, such employer must bear the cost** therefor.

The company complained that the mandatory employment system of disabled persons infringes the freedom of economic activities of business entities, the freedom of contract among private individuals and the right to be equal guaranteed under the Constitution. The complainant also argued that “the Disabled Employees Employment Charge System” violates the freedom of contract and occupation, the right to property, and the right to equality protected under the Constitution.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Domestic Law concerned with the Case

Constitution

Article 10

Article 11 (1) **All citizens shall be equal before the law**, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.

Article 15

All citizens shall enjoy **freedom of occupation**.

Article 23

- (1) **The right of property** of all citizens shall be guaranteed. The contents and limitations thereof shall be determined by Act.
- (2) The exercise of property rights shall conform to the public welfare.
- (3) Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by Act: Provided, That in such a case, just compensation shall be paid.

Article 32 (1) All citizens shall have **the right to work**. The State shall endeavor to promote the employment of workers and to guarantee optimum wages through social and economic means and shall enforce a minimum wage system under the conditions as prescribed by Act.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Domestic Law concerned with the Case

Act on the Promotion of Employment of Disabled Persons

Article 30 (Business Proprietors' Obligation to Employ Persons with Disabilities)

- (1) Any business proprietor who employ over a certain number of individuals, as set forth in the presidential decree, shall employ persons with disabilities to fill at least a ratio set by Presidential Decree (hereinafter "**standard employment rate**") over one-hundredth and within up to five percent of the total number of workers. ...
- (2) Notwithstanding paragraph (1), the standard rate for employment of persons with disabilities may be prescribed separately by Presidential Decree for a certain job category deemed fit for specific disabled persons' abilities.

Article 37 (Payment of **Employment Incentive** of Disabled Persons)

- (1) The Minister of Employment and Labor may pay an employment incentive to any business proprietor who has employed disabled persons more than the standard employment rate.

Article 38 (**Disabled Employees Employment Charges**)

- (1) A business proprietor who fails to meet the standard employment rate under the Article 30 shall pay a contributory charge to the Minister of Employment and Labor each year, as prescribed by Presidential Decree.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Holding

The Constitutional Court **held that the respective provisions are not unconstitutional.**

(1) Decision with respect to the Mandatory Employment of Disabled Persons Provision

The Preamble of the Constitution declares that an equal opportunity is guaranteed for all citizens and seeks to realize a welfare state by presenting the direction of the guarantee of the social basic rights. Article 32 of the Constitution provides that **all citizens are entitled to the right to work, and that the state shall make effort to promote employment and to guarantee appropriate wages** by social and economic means. Article 34 of the Constitution declares that **every citizen is entitled to a life worthy of human beings; at the same time, it obligates the state to promote social security and social welfare** to specifically realize such humane living conditions, and emphasizes that especially those citizens **lacking capability of living due to such factors as disability, ailment, or aging shall be protected** by the state pursuant to the relevant statutes. Also, Article 119(2) of the Constitution provides that the state may regulate and coordinate in order for the democratization of economy through harmonization among various subjects and actors within the economy.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Holding

Disabled persons often face extreme hardship in reality in obtaining a vocation appropriate to their ability due to their physical or mental conditions, which requires a measure at the social and national level in order to guarantee the right to work of disabled persons. From this perspective, despite the guarantee of the freedom of economic activities of business entities and the declaration of the freedom of contract among private individuals under the Constitution, it is an inevitable measure to restrict such freedom to a certain degree in order to recognize human dignity and value and to guarantee humane living conditions for disabled persons who are in a socially and economically weaker position. As the creation of jobs relies on general private business entities as well as the state, it is inevitable to obligate private businesses with respect to the guarantee of employment for disabled persons to an appropriate extent. Therefore, the mandatory employment of disabled persons provision at issue in this case does not excessively restrict the freedom of contract and other economic liberties of the employers.

....

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Holding

(2) Decision with respect to the Disabled Employees Employment Charge Provision

The disabled employees employment charge is a means to secure the effectiveness of the mandatory employment of disabled persons system

Therefore, the legislative purpose of the disabled employees employment charge provision at issue in this case is legitimate. The means adopted to achieve such legislative purpose is appropriate as well, in that the above charge is used to adjust economic burdens of employment of disabled persons and to subsidize such employers who employ disabled persons and does not revert to the general fiscal revenue of the state. Furthermore, the base line of the employment cost is set at 60 over 100 of the minimum wage or more, which neither excessively infringes upon the property right of the employer nor lacks a balance between the legal interests concerned in light of the public interest of the promotion of the employment of the disabled persons mandated by the Constitution.

In addition, the disabled employees employment charge system, pursuant to the provision at issue in this case, functions in itself to adjust the imbalance of economic burdens between the employers who sincerely assume their employment obligation and those who do not, and therefore it is not unreasonable discrimination.

3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Criticism and Improvement

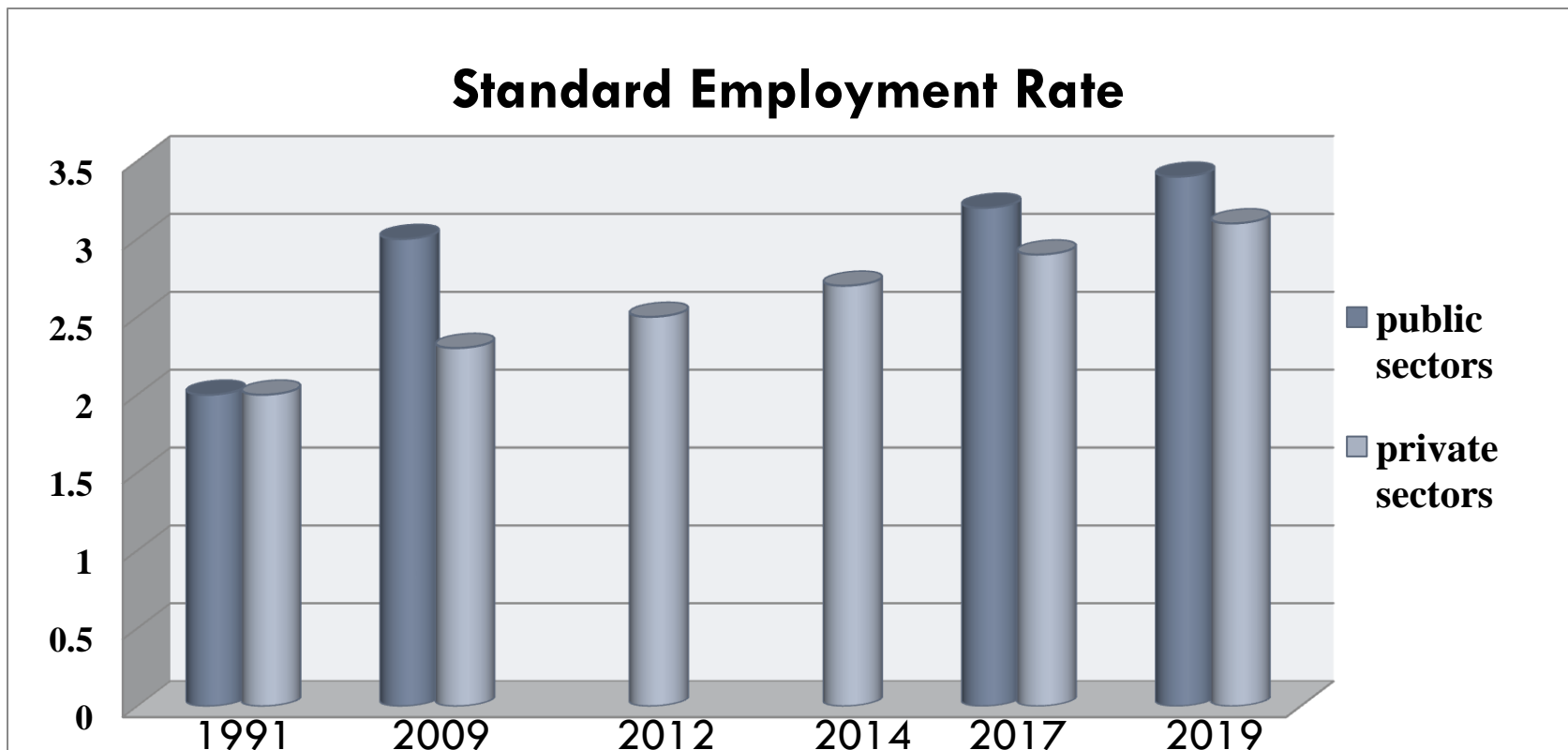
After the judgment **the Act has been revised several times towards strengthening the employment of the disabled**. In particular, the Act has newly introduced several measures to raise ability of the disabled such as vocational guidance, vocational adaptation training, occupational ability development training, employment support system, job referral system, support for self-employed disabled persons and priority purchase system. Moreover, the Act has added measures to prevent misuses of business proprietors such as undue application to monetary incentives and illegal application to priority purchase system.

In 2005, **the Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities was newly enacted** to contribute to the growth of the national economy by proactively facilitating business start-up by and entrepreneurial activities of persons with disabilities, improving the economic and social status of persons with disabilities, and endeavoring to enhance their economic strength.

3. Korean Cases on the Rights of the Disabled

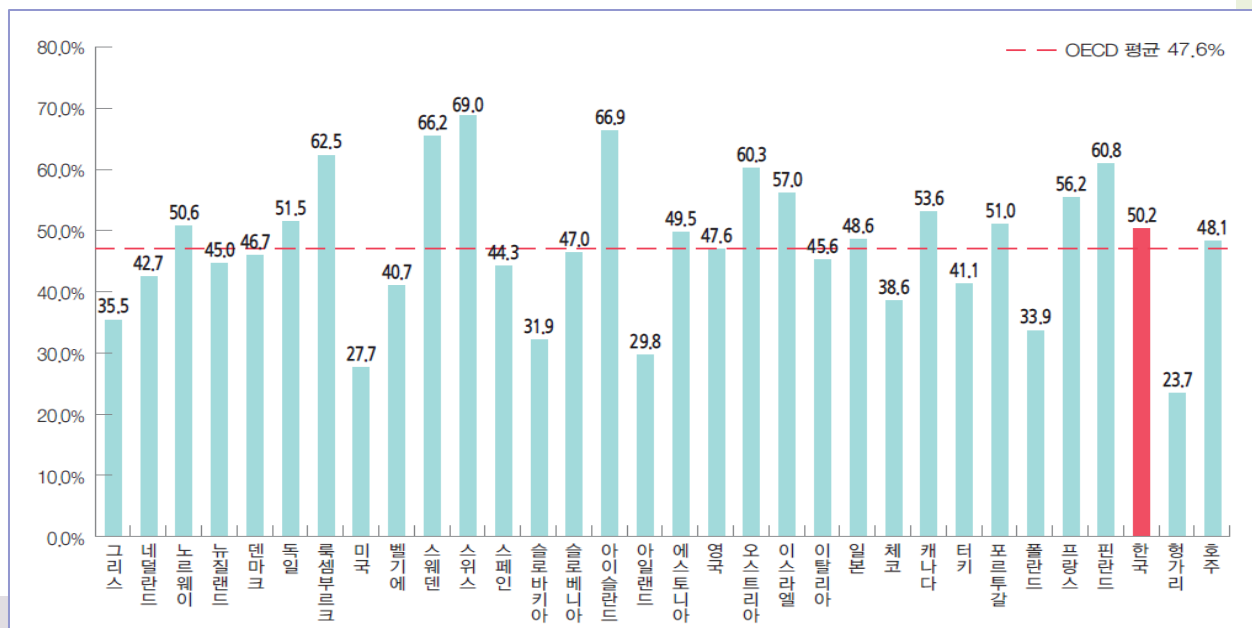
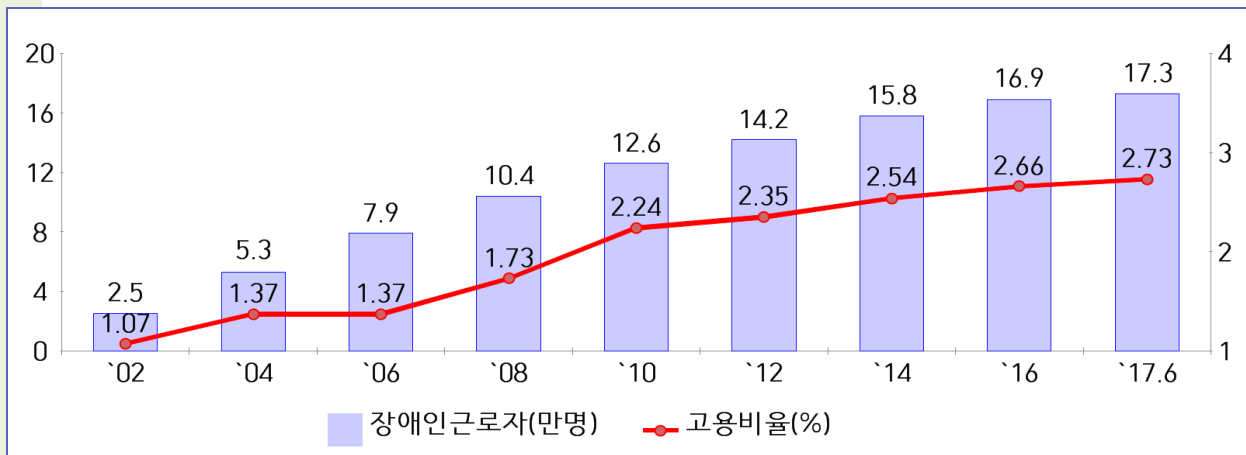
(2) The Right to Work

Criticism and Improvement



3. Korean Cases on the Rights of the Disabled

(2) The Right to Work



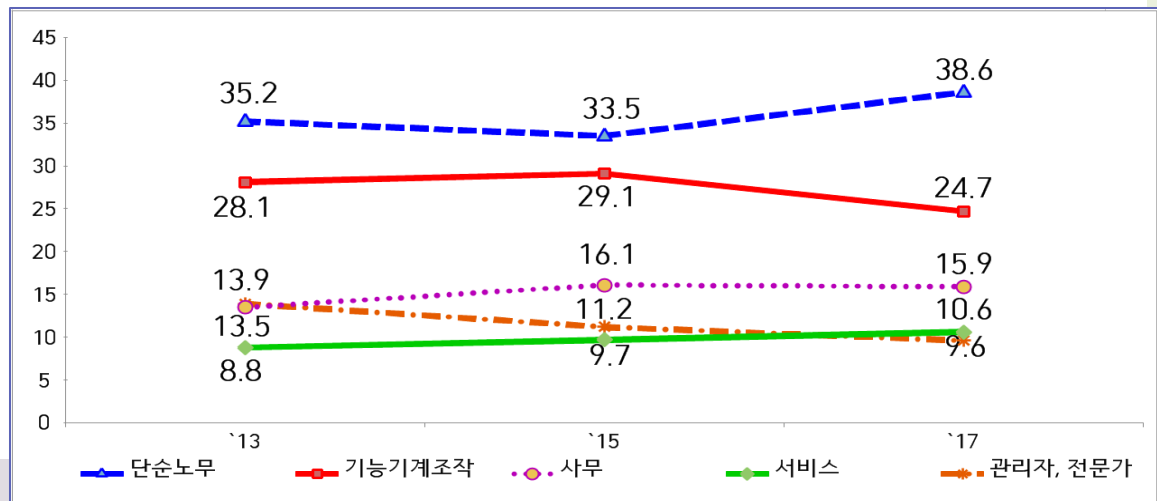
3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Criticism and Improvement

However, **there are still weak points** towards protecting the right of disabled persons to work.

- 1) Compared to the employment rate of the entire nation(61.3%), the employment rate of the disabled(36.5%) is lower.
- 2) Decent jobs for the disability are not enough.
- 3) 68.2% of disabled employees work in the small businesses with fewer than 50 employees.
- 4) The disabled are usually employed in manufacturing and construction industries, and most of them work in simple physical labor.
- 5) The average wage for disabled employees is only about 70 percent of the average wage for all workers.



3. Korean Cases on the Rights of the Disabled

(2) The Right to Work

Criticism and Improvement

These days, several measures have been tried in order to improve the employment of the disabled in Korea.

- 1) All public sectors will be required to follow the standard employment rate. (The current law is targeting the public sectors where more than 50 employees work.)
- 2) The monetary incentives which grant business hiring the disabled will be expanded.
- 3) The Korean government strengthens employment support for the disabled such as addition of various job training programs, function of employment support center and public awareness raising.

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Article 28 of the CRPD

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:
 - (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
 - (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
 - (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
 - (d) To ensure access by persons with disabilities to public housing programmes;
 - (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Fact of the Case

Constitutional Court, 2002 Heon Ma 328 (2004. 10. 28.)

The complainant with mental disability and her husband had received livelihood benefits according to the National Basic Living Security Act.

Livelihood benefits are determined on the basis of minimum cost of living calculated by the number of family members regardless of recipients' disability.

They argued that the Article 6 of the Act providing minimum cost of living without considering additional living expenses due to the disability infringes their rights to attain adequate standard of living and to equality.

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Domestic Law concerned with the Case

Constitution

Article 10

Article 11

Article 34

- (1) All citizens shall be **entitled to a life worthy of human beings.**
- (2) The State shall have the **duty to endeavor to promote social security and welfare.**
- (3) The State shall endeavor to promote the welfare and rights of women.
- (4) The State shall have the duty to implement policies for enhancing the welfare of senior citizens and the young.
- (5) **Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State** under the conditions as prescribed by Act.
- (6) The State shall endeavor to prevent disasters and to protect citizens from harm therefrom.

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Domestic Law concerned with the Case

National Basic Living Security Act

Article 4 (Criteria for Benefits)

- (1) Benefits accorded under this Act shall be paid so as to enable recipients to maintain the minimum level of a healthy and decent life.
- (2) The criteria for benefits under this Act shall be determined for each type of benefits either by the Minister of Health and Welfare **in consideration of the age, size of a household, area of residence, living conditions, etc., of recipients**

Article 6 (Decision, etc. on Standards for Minimum Livelihood Security)

- (1) The Minister of Health and Welfare shall decide **in consideration of income and expenditure levels as well as actual living conditions of the relevant eligible recipient and the inflation rate, etc.**
- (2) The Minister of Health and Welfare shall publicly announce the standards for minimum livelihood security for the following year, by December 1 of each year, through deliberation and resolution by the Central Livelihood Security Committee under Article 20 (2).

Article 7 (Types of Benefits)

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Holding

Whether “the livelihood benefits system to guarantee the minimum living standards for the disabled” under the National Basic Livelihood Security Act is realizing depends on whether the state has taken the minimum necessary measures to ensure a decent human life. “Decent human life” itself is an abstract and relative concept that can vary depending on the historical development, social and economic conditions of its culture. The “minimum necessary measures” are also variable due to changes in the people's social consciousness and changes in social and economic conditions. In determining specific livelihood benefits to ensure a decent living, the state should consider a complex variety of factors including the income level and living standard of the whole people, the size and policy of the state, and conflicting interests of each class of the people. Therefore, **determining the specific livelihood benefits for the disabled is left to a wide range of discretion of the relevant agencies, such as the legislature or the administration delegated by legislation.** In case that whether the state has performed its constitutional duty to ensure a decent human life for the people is subject to judicial review, **it is only in violation of the Constitution if the state has not made any legislation on minimum living security or if it has clearly deviated from the scope of constitutional tolerable discretion due to its remarkable irrationality.**

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Holding

In order to ensure the decent human life for the disability, the state has operated other social assistant programs as well as the livelihood benefits of the National Basic Livelihood Security Act. So, whether the state, with regard to the minimum level of living, is clearly deviated from its discretion should be decided in **comprehensive consideration** of livelihood benefits and all kinds of benefits and exemptions to ensure the minimum living conditions in accordance with other laws.

The Minister of Health and Welfare decided and published the minimum cost of living based on the number of persons in each household, without considering the additional expenditure costs of disabled households. However, **it is hard to say that the state fails to guarantee the minimum standard of living for decent human life of the disability and that it has clearly deviated from the tolerable scope of discretion under the Constitution. This is why (1) livelihood benefits are different between the disability and non-disabled persons** because the assess of livelihood benefits takes disability benefits, support benefits and protection regarding disabled children, medical expenses regarding the disability into account and, consequently, the disability receive more livelihood benefits than non-disabled persons and **(2) the disabled generally receive other benefits and exemption** which are not applied to non-disabled persons.

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

Criticism and Improvement

Besides the benefits system to secure the minimum standard of living for low-incomes, the Korean legislation provides **other monetary support systems** for the disabled including disability benefits, disabled children benefits and medical expenses support for the disabled. In 2011, the disability pension system has been newly adopted.

Despite special systems for the disabled, **the economic situation of disabled persons is not getting better**. As of 2017, average monthly household income of the disabled is only 67 percentage of that for national households. In particular, the absolute poverty rate was at 20 %, which was higher than that of persons without disability, which stood at 7.65%.

(thousand won)[↵]

↵	2011 [↵]		2014 [↵]		2017 [↵]	
	Disabled households [↵]	Whole households [↵]	Disabled households [↵]	Whole households [↵]	Disabled households [↵]	Whole households [↵]
Average monthly household income [↵]	1,982 [↵]	3,260 [↵]	2,235 [↵]	3,560 [↵]	2,421 [↵]	3,617 [↵]
Average monthly household expenditure [↵]	1,618 [↵]	2,642 [↵]	1,706 [↵]	2,814 [↵]	1,908 [↵]	2,716 [↵]

3. Korean Cases on the Rights of the Disabled

(3) The Right to Attain Adequate Standard of Living

장애인가구의 소득 수입원별 평균 금액 - 연령별, 장애정도별

(단위 : 만원)

구분	평균	연령별				장애정도		
		17세이하	18~44세	45~64세	65세이상	중증	경증	계
전체	224.9	326.0	287.0	243.6	178.8	223.9	229.7	227.4
근로소득	122.2	232.9	188.8	139.5	74.9	121.3	126.5	124.5
사업소득	41.5	61.6	53.4	55.2	23.9	34.7	47.3	42.4
재산금융개인연금소득	7.6	4.8	5.7	4.9	10.8	6.3	8.3	7.5
국민기초생활 보장급여	6.6	9.9	8.6	8.5	3.9	11.7	3.6	6.8
기초연금	9.6	4.6	3.2	2.7	18.4	8.8	10.0	9.5
장애인연금	3.7	1.0	7.0	4.2	2.2	8.5	0.8	3.9
공적 이전 소득								
경증장애수당	0.2	4.4	0.4	0.1	0.0	0.6	0.0	0.2
장애연금 (국민연금)	0.7	0.1	0.9	1.2	0.2	1.0	0.5	0.7
기타사회보험 급여소득	19.1	1.2	12.3	17.9	23.9	19.1	18.3	18.6
기타	0.8	1.2	0.6	0.8	0.8	0.9	0.7	0.8
사적 이전 소득	12.3	3.8	5.4	7.7	19.4	10.5	12.8	11.9
기타	0.6	0.6	0.7	0.9	0.3	0.5	0.7	0.6

주 : 2014년 지난 1개월간 장애인가구의 월평균 소득의 금액임

자료 : 보건복지부·한국보건사회연구원, 「2014년 장애인 실태조사」, 2015.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Article 29 of the CRPD

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Fact of the Case

Constitutional Court, 2006 Heon Ma 626 (2009. 2. 26.)

The **Public Official Election Act (hereinafter, the "POEA")** imposes a variety of restrictions on election campaign such as the number of political campaign staff and the election campaign method. The Act **does not discern the regulations of between disabled candidates and non-disabled candidates.**

The Article 62(2) of the Act, regardless of candidate's disability, permitted up to 8 or 10 campaign staff according to the type of election district.

The Article 93(1) regarding campaign method prohibited candidates from distributing document and pictures during campaign period except for official poster, official election pledge paper, street speech, TV discussion and so on.

The complaints were severely disabled candidates running for local office.

The complainants argued that **lack of provision on disability care-givers** infringes the right to equality and the right to participate in political life.

Also, the complaints with speech defect criticized that **campaign method regulation without consideration of disability** violates their right to equality and the right to participate in political life.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Domestic Law concerned with the Case

Public Officer Election Act

Article 62 (Appointment of Persons in Charge of Election Campaign Affairs)

- (2) In order to attend to the election campaign affairs, the manager of an election campaign office or the chief of an election campaign liaison office may appoint election campaign workers (referring to those who are paid allowances and actual expenses provided in the text of Article 135 (1); hereinafter, the same shall apply) from among those who are eligible to engage in an election campaign, as provided in the following items:
4. For an election of a local constituency City/Do council member; Not more than ten persons in the election campaign office
 7. For an election of an autonomous Gu/Si/Gun council member of local constituency; Not more than eight persons in the election campaign office

Article 93 (Prohibition of Unlawful Distribution or Posting, etc. of Documents and Pictures)

- (1) **No one shall distribute**, post, scatter, play, or run an advertisement, letter of greeting, poster, photograph, document, drawing, printed matter, recording tape, video tape, or the like which contains the contents supporting, recommending or opposing a political party (including the contains the contents supporting, recommending or opposing a political party (including the preparatory committee for formation of a political party, and the platform and policy of a political party; hereafter the same shall apply in this Article) or candidate (including a person who intends to be a candidate; hereafter the same shall apply in this Article) or showing the name of the political party or candidate with the intention of influencing the election, not in accordance with the provisions of this Act, from 180 days before the election day (the time when the reason for holding the election becomes final, in case of a special election) to the election day: Provided, That the same shall not apply to acts falling under any of the following items:

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Holding

- 1) Regarding the provisions of the POEA which place the same restrictions for severely disabled candidates as for non-disabled candidates in terms of the total number of campaign staff and the number of persons who can distribute campaign business cards, the Constitutional Court unanimously delivered a dismissal opinion on the grounds that there is no possibility for the provisions of the POEA to infringe on the complainants' basic rights including the right to equality.
- 2) Regarding the provision of the POEA which places the same restrictions for severely disabled candidates as for non-disabled candidates in terms of the election campaign method [are not the violation], four Justices presented an incompatibility opinion and one Justice presented a unconstitutionality opinion. This constitutional complaint, however, was denied for failure to meet the quorum requirement of six Justices to uphold a constitutional complaint.
 - A. Due to the inherent difference in their job descriptions, it is impossible for the assistants or caregivers to be included in the category of political campaign staff. Therefore, the complainants who are severely disabled candidates can get help from assistants regardless of the limitation imposed by the provisions of the POEA on the number of campaign staff. For the foregoing reasons, the Court decided that the uniform restriction subscribed in the provisions of the POEA against both disabled and non disabled candidates on the number of campaign staff did not violate the complainants' basic rights such as the right to equality.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Holding

B. It is physically impossible for a candidate or a candidate's spouse who is severely disabled to distribute business cards to electors in person during campaign period. Therefore, **it is easily expected that assistance from a caregiver in distributing business cards for such a candidate/spouse is indispensable.** In this regard, the distribution of business cards by caregivers to electors should be considered equivalent to that by a disabled candidate or a disabled spouse himself/herself. Therefore, although there is no specific provision in the POEA that allows a severely disabled candidate or a spouse to 'get help from a personal assistant or caregiver in distributing campaign business cards', it is naturally inferred from the situation that such an assistant should be accompanied for them. As such a personal assistant or caregiver is interpreted to be included in the category of those who can distribute business cards in the run-to the election, the provisions of the POEA do not infringe on the complainants' basic rights including the right to equality.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Holding

2. Decision to deny the constitutional complaint regarding the provision of the POEA which places the same restrictions for severely disabled candidates as for non-disabled candidates in terms of the election **campaign method**
 - A. . . . Although the candidates with speech impediments cannot directly and personally communicate with their electors and canvass a district for votes, **there are some types of election campaign method which can be used by them, such as publishing advertisements and campaign address in newspapers, on television, radio or the internet**. Moreover, those new methods are gaining greater influence in modern society. Also, as the magnitude and scope of "oral" statements by a candidate himself/herself in an election campaign is relatively small and narrow except for having personal conversations with electors, the verbally disabled candidates may not be so much disadvantaged in terms of "oral" communication because they can communicate through the help of their agents such as campaign staff, volunteers or personal assistants who can meet the individual electors and canvass a district for votes in lieu of them.
 - B. . . . But **granting additional campaign methods exclusive to the verbally disabled candidates requires another law** that regulates criteria for evaluating the degree of speech disorders of the disabled candidates and for the types and quantity of additional documents to be allowed for them, which would be very difficult to be enacted given both the legislative technique and reality.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Criticism and Improvement

The verbally disabled candidates are **definitely at disadvantage** in terms of communicating their political views and policies to electors and appealing for support as they cannot clearly deliver their message and intention due to their speech disorders. Moreover, even for those who have a certain degree of communicative competence, **the prejudice or hostility of some electors** toward the ways the verbally disabled or deficient candidates communicate, including their speaking attitude or pronunciation, would become a stumbling block that is hard to be overcome for them. Given **the lasting importance of traditional campaign method of face-to-face communication and interaction with electors**, it is suffice to say that the general situation in election campaign is clearly far less favorable to verbally disabled candidates than to non-disabled candidates. Accordingly, there should have been a legal measure suited to level the playing field for the disabled candidates by providing them with extra campaign methods that can be effective substitutes for verbal communication, such as allowing them to have one or two more campaign staff who can assist them to have smooth communication with electors in addition to the number of staff fixed in the POEA, or extending the upper limit on the volume of campaign literature stipulated in the POEA. **The facially neutral Instant Provision imposing uniform restriction on the campaign methods against both disabled and non-disabled candidates finally resulted in creating de facto discrimination against the disabled candidates** due to the failure to consider the difference between them, thereby breaking the balance between the legislative purpose (guaranteeing the real freedom and fairness in election) and the means to achieve the purpose (imposing restriction on campaign methods), in violation of the complainants' right to equality.

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Criticism and Improvement

< Revision of the Act >

Article 62 (Appointment of Persons in Charge of Election Campaign Affairs)

- (4) Any handicapped preliminary candidate or handicapped candidate determined by Regulations of the National Election Commission may have an assistant (hereinafter referred to as "assistant"), from among persons who may conduct an election campaign to assist such candidate. In such cases, **no assistant shall be included in the number of election campaign workers** under paragraphs (2) and (3). <Newly Inserted by Act No. 9974, Jan. 25, 2010>

Article 66 (Written Campaign Promises)

- (5) Any candidate, his/her family members, election manager, head of election liaison office, election workers, chief accountant and **assistants accompanying a candidate may distribute the written campaign promises**: Provided, That as for the methods of distributing written campaign promises by mailing (excluding election campaign promises in braille), door-to-door visit or scattering (including a method of keeping in a specific place), they are prohibited. <Amended by Act No. 8879, Feb. 29, 2008; Act No. 9974, Jan. 25, 2010>

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Criticism and Improvement

< Revision of the Act >

Article 68 (Props Including Shoulder Belts)

- (1) Every candidate, his/her spouse (including one person who is reported by the candidate instead of his/her spouse from among his/her lineal ascendants or descendants), every election campaign manager, every chief of the election campaign liaison office, every election campaign worker, **every assistant accompanying a candidate** and every accountant in charge may wage the election campaign, wearing or carrying shoulder belts, in which the photograph, name, mark, the name of a political party to which a candidate belongs and other matters necessary for public relations are printed, or jackets, labels, signaling flags, mascots and other props within standards and amounts determined by Regulations of the National Election Commission, during the period of an election campaign.

Article 122-2 (Filling, etc. of Election Expenses)

- (3) **The following expenses shall be borne by the State or a local government for candidates.** In such cases, the expenses specified in subparagraphs 3-2 and 5 shall be borne by the State;
 - 3-2. **Allowances and actual expenses for assistants** (including assistants appointed when the candidate was a preliminary candidate);

3. Korean Cases on the Rights of the Disabled

(4) The Right to Participate in Political Life

Criticism and Improvement

16개 시·도지사 후보 정당별 점자형 공보물 제작 현황

정당명	총 후보자	점자제작 후보자	점자 제작률 (%)	책자형 평균연수	점자형 평균연수	점역비율 (%)
한나라당	15	15	100			
민주당	13	11	85			
자유선진당	3	3	100			
미래연합	1	0	0			
민주노동당	5	4	80			
평화민주당	4	1	25			
진보신당	8	7	88			
국민참여당	3	2	67			
무소속	3	3	100			

부산시 점자형 공보 제작 현황 (단위:명)

선거 종류	출마자 수	점자형 공보 제작 후보 수
시장	3	2
교육감	7	5
기초단체장	49	24
시의원	122	41
구·군의원	377	58

Big-city mayors and Governors in 2010

Busan council members in 2014

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Article 16 of the CRPD

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Fact of the Case

Supreme Court 2003 Do 5322 (Oct. 24, 2003)

- Victim(F, 37 years old) with mental disability
- Offender gave a violent impression and posed to hit with his fist in order to suppress the victim's resistance and to commit a rape.
- Point> it did not constitute assault or threat under the related acts(criminal acts or the ...)
- Q; Did it constitute quasi-rape?



Supreme Court 2011 Do 6907 (Feb. 13, 2014)

- Victim; female, 33 years old with mental disability
- Offender put his arm around her shoulder and touched her chest with the other arm and took off her pants and committed indecent assault.
- Point> it did not constitute assault or threat under the related acts(criminal acts or the ...) (because assault concerned with the rape is also strictly interpreted)
- Q; Did it constitute quasi-rape? According to the previous case law, it cannot constitute quasi-rape or quasi-indecent act.

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Domestic Law concerned with the Case

Act on Special Cases concerning the Punishment, etc. of Sexual Crimes

Act No. 10258 revised and entered into force on Apr. 10, 2010

Article 6 (Rape against Persons with Disabilities)

(4) A person who has sexual intercourse with or commits an indecent act on a **women by taking advantage of the latter's condition of inability to resist** due to physical or mental disability shall be punished according to the Articles 297 and 298 of the Criminal Act.

Act No. 11088 revised and entered into force on Nov. 17, 2011 (so-called Dogani Act)

Article 6 (Rape against, or Commission of Indecent Acts by Compulsion on, Persons with Disabilities)

(4) **A person who commits a crime prescribed in Article 299 (Quasi-rape, Quasi-indecent act by compulsion) of the Criminal Act** shall be punished according to the provisions of paragraphs (1) through (3).

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Domestic Law concerned with the Case

Act No. 15977 revised and entered into force on Dec. 18, 2018 (current law)

Article 6 (Rape of, or Commission of Indecent Acts by Compulsion on, Persons with Disabilities)

(4) A person who has sexual intercourse with or commits an indecent act on another person **by taking advantage of the latter's condition of inability to resist or difficulty in resisting** due to physical or mental disability shall be punished according to the provisions of paragraphs (1) through (3).

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Holding

Supreme Court 2003 Do 5322 (Oct. 24, 2003)

Supreme Court put strict interpretation on “inability to resist.”
= psychologically or physically the resistance is absolutely impossible or remarkably difficult

Criticism> **strict approach** to the provision resulted in failure to protect a person with mental disability because the person cannot understand the rape or indecent act exactly and her content is not clear due to special characteristic of the victim and, therefore, it does not constitute “inability to resistance” under the Act.

<Case law after the Dogani Act>

Supreme Court 2011 Do 6907 (Feb. 13, 2014)

The trial court acquitted of the quasi-indecent act on the ground that the victim is mentally retarded but her ability to think or discern or ability to self-defense is entirely non-existent or remarkably insufficient and, therefore, it does not constitute “inability to resist”.

3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Holding

However, the Supreme Court rejected the trial court judgment as below;

- ✓ **'A state of inability to resist due to physical or mental disabilities' shall be considered to include cases that physical or mental disability directly causes the victim to be unable to resist physically or psychologically but also cases that psychological or physical disability, as a main reason, leads to inability to resist physically or psychologically.**
- ✓ In determining the latter, the court should **comprehensively examine** the extent of the victim's mental disability as well as the relationship between the victim and the perpetrator, the circumstances and environment surrounding the victim, the content and method of the perpetrator's actions, and the victim's perception and reaction, etc.
- ✓ The legislative purpose of Article 6 of the Act to guarantee the sexual self-determination rights of the disabled should be paid attention to.
- ✓ The fact that the victim was mentally disabled should be fully considered during the decision whether the victim is unable to resist should be fully considered.
- ✓ Therefore, the court should carefully decide whether the victim is able to exercise the right to sexual self-determination after comprehensively considering the intellectual ability of the victim, the degree of social intelligence and maturity of the victim due to mental disabilities, and ability of communication, personal relationship of the victim and so on.

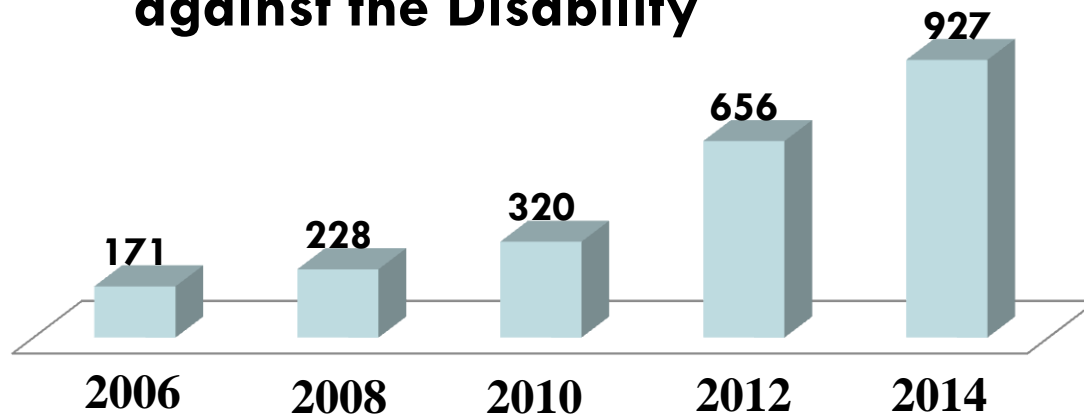
3. Korean Cases on the Rights of the Disabled

(5) The Right to Freedom from Sexual Violence

Criticism and Improvement

The cases of being unable to exercise her right to sexual self-determination due to her weak judgment or decision-making ability due to physical or psychological disability can be admitted as “inability to resist.”

Numbers of Sexual Violence against the Disability



3. Korean Cases on the Rights of the Disabled

(6) The Right to Freedom from Violence and Exploitation

Article 16 of the CRPD

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

3. Korean Cases on the Rights of the Disabled

(6) The Right to Freedom from Violence and Exploitation

Fact of the Case

- There were several cases regarding so-called salt-farm slaveries where disabled men had been physically and emotionally abused and exploited for a significant long time.
- The typical example is as below;
- In 2008, Mr. C. with mental disability and Mr. Kim with visual impairment, had lived at the Hong's property (salt-farm) in an isolated island and worked almost 19 hours a day for salt farming and household chores. They had been severely beaten and threatened if they disobeyed or attempted to escape. They had almost never received payment for their working.
- Mr. Kim sent a letter to his mother and the situation of the victims became known media in 2014.

3. Korean Cases on the Rights of the Disabled

(6) The Right to Freedom from Violence and Exploitation

Domestic Law concerned with the Case

Criminal Act

Article 257 (Inflicting Bodily Injury on Other or on Lineal Ascendant)

- (1) A person who inflicts a bodily injury upon another shall be punished by imprisonment for not more than seven years or suspension of qualifications for not more than ten years or by a fine not exceeding ten million won.

Article 260 (Crime of Violence)

- (1) A person who uses violence against another shall be punished by imprisonment for not more than two years, a fine not exceeding five million won, detention, or a minor fine.

Article 283 (Intimidation, Intimidation on Lineal Ascendant)

- (1) A person who intimidates another shall be punished by imprisonment for not more than three years, a fine of not more than five million won, detention or a minor fine.

Article 348 (Quasi-Fraud)

- (1) A person who, by taking advantage of the inexperience of a minor or the mental disorders of another, takes property or obtains pecuniary advantage from the latter, shall be punished by imprisonment for not more than ten years or by a fine not exceeding 20 million won.

3. Korean Cases on the Rights of the Disabled

(6) The Right to Freedom from Violence and Exploitation

Holding

The trial court sentenced one and a half years in prison to the offender who had often assaulted and threatened three disabled men for several years and paid them only 2,500\$ per year.

In a similar case, the court sentenced six months in prison and only 1,500\$ penalty to the offenders, respectively, who often assaulted and threatened three other disabled men for several years and paid them nothing.

3. Korean Cases on the Rights of the Disabled

(6) The Right to Freedom from Violence and Exploitation

Criticism and Improvement

Revision of the Criminal Act for strict punishment



Article 288 (Kidnapping, Abduction, etc. for Purpose of Indecent Acts, etc.)

(2) A person who obtains and maintains another under the control of his/hers or a third person by means of the threat, use of force or other forms of coercion, or by means of fraud, deception or enticement for the purpose of labor exploitation, sex trafficking, sexual exploitation, or the acquisition of organs, shall be punished by imprisonment for at least two years up to 15 years.

Article 289 (Trafficking in Persons)

(2) A person who buys or sells another for the purpose of engaging in an indecent act, sexual intercourse, marriage, or for gain, shall be punished by imprisonment for at least one year up to ten years.



✓ However, there are still problems regarding violence and exploitation of the disability.

✓ Lack of awareness and severity of problems

✓ Absence of effective punishment laws related to slavery

4. Implications

The Korean legislation and precedents have continued to improve towards protecting the rights of disabled persons.

However, there are still challenges for fully implementing the CRPD.

- ✓ The law is not enough to ensure the rights of the disabled guaranteed the CRPD.
- ✓ Law is not effectively to protect the rights of persons with disability .
- ✓ There is still significant gap between law and practice.
- ✓ Raise public awareness to eliminate discrimination on the disability.

Thank you.