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REPORT ON CITIZENSHIP LAW: THE REPUBLIC OF KOREA

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Report on Citizenship Law

The Republic of Korea

Chulwoo Lee

1. Introduction

This report canvasses the citizenship law of the Republic of Korea with reference to its historical background and evolution, the system of citizenship law and administration, the modes of acquisition of citizenship, the grounds for the loss of citizenship, the law's attitude to multiple citizenship and statelessness, and issues for future reform. The citizenship regime of the Republic of Korea has been shaped by the country's background as a historic protonational state with a putatively 'homogenous' population (Hobsbawm 1992: 66), the experience of Japanese rule, waves of outmigration and diasporic experiences, national division, and a 'migration transition' since the 1990s (Castles, Haas & Miller 2014: 46-51). The report focuses on the legal aspects of the citizenship regime and does not purport to discuss the political and social implications of the law, but discerning readers will be able to sense how the backgrounds and processes of nation-building and population movement have shaped the legal regime.

The report offers commentaries on legal concepts and rules, which require nuanced translation and comparative understanding. In consideration of the limitations of the English translations of laws and legal concepts provided by the Korea Legislation Research Institute (KLRI), a government-sponsored policy institute whose translations are frequently used for official purposes, the report comes up with its own translations based on comparative knowledge without neglecting the official and unique wordings of original legal provisions.¹ As part of the EUDO Citizenship project, the report aligns its terminologies and descriptions with the EUDO Glossary on Citizenship and Nationality.

In Korean law, the term *gukjeok* is used to denote the legal bond between a person and a state or an individual's "quality of being a subject of a certain state" (Jennings & Watts 1992: 851).² Its literal meaning squarely coincides with the meaning of the German term *Staatsangehörigkeit*. Hence, it corresponds to 'nationality' if nationality is defined as "the legal relationship between a person and a state as recognised in public international law" (Bauböck et al. 2006: 17). In the NATAC (Acquisition and Loss of Nationality in the EU-15 States) project of 2004-2005, nationality was preferred over 'citizenship,' defined as "the sum of legal rights and duties of individuals attached to nationality in domestic law" (Bauböck et

¹ The English translation of legislation uploaded on the EUDO Country Profile is an unmodified copy of the translation provided by the KLRI at http://elaw.klri.re.kr/kor_service/main.do. English translations of laws and regulations are also available on the Ministry of Justice's legislation information webpage <http://www.law.go.kr/main.html>.

² In this report, Korean words are transliterated according to the system of romanisation adopted in 2000 by the Ministry of Culture and Tourism of the Republic of Korea, except the names of the cited authors.

al. 2006: 17). Indeed, there is no need to distinguish between citizenship and nationality in explaining Korean law, because Korea's official legal principle is that all people who possess *gukjeok* equally enjoy the legal status and the bundle of rights reserved for the full members of the state community.³ This report, however, uses the term 'citizenship' for *gukjeok* in compliance with the EUDO Country Report template. While the terminological position adopted in the NATAC project conforms to the standard international legal lexicon (Lee 2013a: 1), the EUDO Country Report template seems to prefer 'citizenship' to 'nationality' in order to minimise confusion, considering the complex developments of the two terms in European history and the diverse meanings attached to those terms in Europe (see Vonk 2012: chap. 1). Yet this report keeps using 'nationality' when the original legislative terminology in Korea should be respected and also to denote an individual's status of subjection to the personal jurisdiction of a state that lacks an idealised modern institution of citizenship typified by equal political rights for all members, such as Joseon (the traditional Korean state) and prewar Japan.

2. Historical background

2.1. Historical overview

Two historical background factors complicate the citizenship law and practice of the Republic of Korea. First, Japanese rule (1910-1945) brought a disruption to the sovereign government of a country which had been a recognised member of the Westphalian international system. The citizenship law and administration of the Republic of Korea faces problems arising from the challenging task of establishing links between the citizenship of the Republic of Korea under the Nationality Act of 1948, subjecthood under Japanese rule, and subjecthood under the traditional Korean state until its annexation by Japan in 1910. Second, Korea's division into the Republic of Korea (South Korea, hereinafter ROK) and the Democratic People's Republic of Korea (North Korea, hereinafter DPRK) gives rise to the question of how to treat the citizens of the DPRK, given only the very abstract constitutional rule that the ROK has sovereignty over the whole of the Korean peninsula and adjacent islands (art. 3, Constitution of the Republic of Korea 1988).

The traditional Korean state (Joseon 1392-1897, Empire of Korea 1897-1910) did not have legislation on nationality. Neither did the Japanese occupation authorities impose any nationality legislation on Koreans, not even Japan's Nationality Act, despite annexation. The first legislation on nationality was the Temporary Provisions Concerning the Law of Nationality (Public Act No. 11) issued in May 1948 by the South Korean Interim Government under the United States Army Military Government in Korea (USAMGIK). This law became a law of the ROK when its first constitution came into force on 17 July 1948, as the Constitution recognised the effect of the existing laws insofar as those laws were not contrary to the Constitution.

The Constitution of 1948 delegated rule-making on citizenship to the National

³ Considering the reality, however, the Republic of Korea might need a conceptual distinction between citizenship and nationality, given its inability to extend public rights to a large percentage of its population – North Koreans –, who are nationals of the Republic of Korea under its constitution.

Assembly (art. 3). Accordingly, the Nationality Act was enacted in December 1948. Both the Temporary Provisions Concerning the Law of Nationality and the Nationality Act of 1948 provided for *ius sanguinis a patre* as the main form of acquisition of citizenship at birth.

The Nationality Act has been amended twelve times (as of 31 December 2016). The following table shows the history of the Nationality Act in a nutshell.

Table 1. The enactment and amendments of the Nationality Act (1948-2016)

Year	Major Changes
1948	<ul style="list-style-type: none"> ● <i>Ius sanguinis a patre</i> ● Spousal transfer of citizenship (automatic acquisition of citizenship by the wife of a citizen upon marriage) ● Acquisition by acknowledgment ● Ordinary naturalisation ● Facilitated naturalisation ● Special naturalisation ● Filial and spousal extension of acquisition of citizenship (concurrent and automatic acquisition of citizenship by the wife and child) ● Naturalisation of the wife of a foreigner possible only concurrently with her spouse ● Public service restrictions against naturalised citizens, including preclusion from eligibility for the presidency of the Republic ● Loss of citizenship due to acquisition of foreign citizenship by marriage, voluntary acquisition of foreign citizenship, etc. ● Requirement of domicile in Korea for reinstatement of nationality
1962	<ul style="list-style-type: none"> ● Requirement of loss of the original foreign citizenship within six months from acquisition of Korean citizenship ● Reinstatement of nationality made possible outside of Korea upon recommendation by the Committee on the Reinstatement of Nationality
1963	<ul style="list-style-type: none"> ● Abolition of public service restrictions against naturalised citizens ● Loss of citizenship upon the passage of six months of acquisition of Korean citizenship without losing the other citizenship
1976	<ul style="list-style-type: none"> ● Abolition of the Committee on the Reinstatement of Nationality and the application of the same procedure for reinstatement of nationality inside and outside of the state
1998	<ul style="list-style-type: none"> ● <i>Ius sanguinis a patre et a matre</i> ● Facilitated naturalisation for the spouses of citizens ● Abolition of the spousal extension of acquisition of citizenship ● Women made eligible for naturalisation separately from their spouse ● Express enumeration of circumstances barring reinstatement of nationality

	<ul style="list-style-type: none"> ● Option requirement for dual citizens
2001	<ul style="list-style-type: none"> ● Extension of the period for the acquisition of citizenship by persons born to Korean mothers from birth within ten years to twenty years prior to the 1998 amendment
2004	<ul style="list-style-type: none"> ● Facilitated naturalisation for spouses unable to fulfil the period-in-marriage requirement for certain reasons not attributable to them
2005	<ul style="list-style-type: none"> ● Restriction of renunciation of citizenship by dual citizens before release from the military obligation
2008	<ul style="list-style-type: none"> ● Technical changes due to the change of the family registration law
2008	<ul style="list-style-type: none"> ● Nullification of naturalisation, reinstatement of nationality or nationality determination on account of deceit or other illegitimate acts
2010	<ul style="list-style-type: none"> ● Special naturalisation for talented foreigners
2011	
	<ul style="list-style-type: none"> ● Extension of the period for renunciation of the original citizenship after acquisition of Korean citizenship from six months to one year ● Toleration of permanent multiple citizenship (by allowing for a pledge not to exercise foreign citizenship in Korea as an alternative to the actual renunciation of the other citizenship) for persons acquiring citizenship through certain categories of special naturalisation / reinstatement of nationality or facilitated naturalisation on the ground of marriage, returning adoptees who acquire Korean citizenship by reinstatement of nationality, permanent returnees of 65 years of age or above who acquire Korean citizenship by reinstatement of nationality, and persons who have difficulty in renouncing their foreign citizenship ● Toleration of permanent multiple citizenship (by allowing for a pledge not to exercise foreign citizenship in Korea as an alternative to the actual renunciation of foreign citizenship) for persons who have the obligation of option of citizenship ● Order to choose citizenship upon failure to fulfil the obligation of option within the designated period or conduct contrary to the pledge not to exercise foreign citizenship in the Republic of Korea ● Multiple citizens to be treated only as citizens of the Republic of Korea ● Renunciation of Korean citizenship allowed only at diplomatic missions abroad and on condition of domicile abroad ● Renunciation of foreign citizenship as a condition for appointment to public service positions barred to foreigners ● Decision of loss of citizenship made possible against multiple citizens after birth on account of conduct prejudicial to the national interest etc.
2014	<ul style="list-style-type: none"> • Technical change
2016	<ul style="list-style-type: none"> • Technical change

2.2 Nationality prior to the birth of the republic

The treatment of castaways and the naturalisation of Jurchens and other aliens suggest that the historic Korean state had a more or less clear conception of its personal boundary. When the kingdom was subjected to unequal treaties in the late nineteenth century and experienced an expanded scale of movement of people across the borders, it felt a strong urge to define and institutionalise the personal boundary of its subjects. In 1900, it issued a law to prohibit and punish expatriation without permission, in reaction to Koreans who asserted extraterritorial rights after acquiring Russian nationality. Yet Korea failed to make a nationality law, unlike its neighbours Japan and Qing China, which enacted a nationality law in 1899 and 1909 respectively. After annexing Korea in 1910, Japan treated Koreans as Japanese nationals, but it did not apply its Nationality Act, and ambiguously explained that Koreans had become Japanese nationals as a result of annexation and in accordance with custom and reason (Lee 2015: 10). This differed from the way Japan treated Taiwanese, another people that came under Japanese rule, to whom the Nationality Act of 1899 was retroactively applied (Chen 1984: 245-246). Japan feared Koreans slipping out of its personal jurisdiction by acquiring foreign nationality, which would result in the automatic loss of nationality had the Nationality Act been applied. Japan did not recognise expatriation by Koreans, although many Koreans outside of the Korean peninsula, those in Russia and later the Soviet Union in particular, acquired the nationality of their country of residence.

In August 1945, Japanese rule came to an end, and the Korean peninsula was divided between the United States and the Soviet Union. The United States Army Military Government in Korea (USAMGIK) felt the need to enact a nationality law for the repatriation of Japanese nationals, the confiscation of assets owned by Japanese nationals, and the determination of electors for forming a constituent assembly. The Temporary Provisions Concerning the Law of Nationality (Public Act No. 11) was issued too late to be used for those purposes, while different criteria had been adopted for the three tasks respectively.

The Temporary Provisions Concerning the Law of Nationality stipulated that, among others, a person i) whose father was ‘Korean’ (*joseonin*), ii) whose mother was Korean and whose father was unknown or stateless, or iii) who was born in Korea and whose father and mother were unknown or stateless had Korean (Joseon) nationality (sect. 2). The law, however, did not define who the Koreans (*joseonin*) were. The law provided for the restoration of the Korean nationality of persons who had acquired foreign nationality or been entered on the Japanese family register upon the renunciation of the foreign nationality or the cancellation of the Japanese family registration (sect. 5). The restoration of nationality retroactively took effect on 9 August 1945. Hence the Temporary Provisions recognised that Koreans could lose Korean nationality by acquiring foreign nationality or by being entered on the Japanese family register.

Under the Nationality Act of 1948, a person acquired the ‘citizenship of the Republic of Korea’ *iure sanguinis* provided that i) his or her father was a citizen of the ROK, ii) his father had been a citizen of the ROK at the time of death if the father died before the birth of the person, iii) his or her mother was a citizen of the ROK if his or her father was unknown or was stateless, or iii) he or she was born in the ROK if his or her father and mother were unknown or stateless (art. 2). The act, however, was silent on who the initial citizens of the ROK were. If the Republic of Korea were interpreted to be the Republic of Korea whose government was established in 1948, the vast majority of people would be excluded from the citizenry because their fathers were born earlier. The drafters deliberately omitted an extra provision on the initial citizens because they believed that the Korean state

had never ceased to exist despite Japanese occupation and meant by the ‘citizens of the Republic of Korea’ the subjects of the Korean state whatever name the polity had (Chung 1998: 236-37). The initial citizens of the ROK should be the same as *joseonin* (Koreans) under the Temporary Provisions on the Law of Nationality, but the Nationality Act was silent on the effect of the Temporary Provisions; the drafters ignored the Temporary Provisions since they intended to apply the category ‘citizens of the Republic of Korea’ to all members of the historic Korean state, who were subsumed under the term *joseonin* in the Temporary Provisions.

The ROK judiciary, however, uses the Temporary Provisions as a bridge to ROK citizenship. The Yi Yeongsun case of 1994-1996 was the first case in which the Korean judiciary expressly declared a North Korean an ROK citizen.⁴ In judging on the citizenship status of the North Korean, the Seoul High Court and the Supreme Court explained how Koreans in general had become ROK citizens. The courts ruled that Koreans (*joseonin*) possessed Joseon nationality under the Temporary Provisions Concerning the Law of Nationality, and acquired ROK citizenship when the Constitution came into force on 17 July 1948 (Supreme Court 1996. 11. 12. 96Nu1221). The ruling has been criticised for using the term ‘acquired’ as if Koreans newly obtained the citizenship of the ROK, a country which had already existed (Kim 1997). Given the judiciary’s interpretation of the historical status of the ROK in other significant cases, the courts are presumed to have intended to hold that the Joseon nationality of the Koreans had been automatically converted to ROK citizenship.

2.3 Major changes after the enactment of the Nationality Act 1948

Apart from the principle of *ius sanguinis a patre*, the Nationality Act 1948 had the following characteristic features.

- Spousal transfer of citizenship: a foreign woman married to a citizen man automatically acquired Korean citizenship upon marriage, while a foreign man married to a citizen woman had to apply for facilitated naturalisation if he wished to acquire Korean citizenship (arts. 3(i) & 6(ii)).
- Spousal and filial extension of acquisition of citizenship: when a foreign man acquired Korean citizenship by naturalisation, his wife and minor child acquired Korean citizenship automatically and concurrently with the reference person unless the laws of their countries disallowed such acquisition of Korean citizenship (art. 8).
- A foreigner woman could not be naturalised separately from her foreigner husband (art. 9).
- Naturalised citizens, persons who automatically acquired citizenship by marriage, and persons who acquired citizenship concurrently with a naturalised citizen were not eligible for the positions of the President of the Republic, the Vice-President of the Republic, a member of the State Council, an ambassador extraordinary and plenipotentiary, a minister of a diplomatic mission, the Chief Commander of the Military Forces, and the Chief of Staff of the Army, Navy or Air Force (art. 10).
- Former citizens could acquire Korean citizenship by reinstatement of nationality if

⁴ This does not mean that North Koreans had not been treated as ROK citizens before this ruling. North Koreans had been treated as ROK citizens through administrative practice and tacitly recognised as citizens by courts in cases involving espionage and national security offences.

they were domiciled in the country (art. 14).⁵

The Nationality Act was first amended in 1962. Former citizens domiciled abroad could now recover their citizenship by reinstatement of nationality upon recommendation by the Committee on the Reinstatement of Nationality. One could acquire citizenship (by naturalisation, marriage or acknowledgment) only on condition that the person should lose his or her original foreign citizenship within six months (art. 3). This provision was revised in 1963 to the effect that a person who acquired Korean citizenship would lose the citizenship after the passage of six months if he or she did not lose his or her foreign citizenship (art. 12(7)).

The 1963 amendment lifted the public service restrictions against naturalised citizens, persons who automatically acquired citizenship by marriage, and persons who acquired citizenship concurrently with a naturalised citizen. In 1976, the Committee on the Reinstatement of Nationality was abolished, and former citizens domiciled abroad could apply for reinstatement of nationality in the same way as former citizens domiciled in the country.

The 1997 revision marked one of the two greatest reforms to the Nationality Act. The amendments were mainly to promote gender equality and to protect the right of the child in line with the international human rights conventions to which Korea had acceded (see 3.2 below). Now a child born to a Korean woman and a foreign man could acquire Korean citizenship *iure sanguinis* (art. 2). By way of an addendum, the law gave chances for children born to Korean mothers and foreigner fathers since ten years prior to the entry into force of the amendment (14 June 1998) to acquire Korean citizenship. A person born within that period whose mother was still a Korean citizen or, if she had passed away, was a Korean citizen at the time of death could acquire Korean citizenship by declaration within three months from the date of the law's entry into force (Addenda art. 7). Later, the Constitutional Court ruled that the limiting of acquisition by declaration to ten years prior to the amendment was too restrictive and therefore not in conformity with the Constitution (Constitutional Court 2000. 8. 31. 97HeonGa12). In response, an amendment in 2001 lengthened the period to twenty years. Hence, persons born to Korean mothers and foreigner fathers between 14 June 1978 and 13 June 1998 could acquire citizenship by declaration no later than the end of 2004.

Among other changes was the repeal of the automatic spousal transfer of citizenship to the wife of a citizen upon marriage. Now the spouses of citizens should go through facilitated naturalisation regardless of gender (art. 6(2)). Also repealed were the restriction of the naturalisation of women separately from their husbands and the automatic spousal extension of acquisition of citizenship to women. These changes, which were to give women autonomy in acquisition of citizenship, went hand in hand with a change to the rule on the automatic filial extension of acquisition of citizenship. Now minor children have to apply for naturalisation, although they can acquire citizenship concurrently with their parents, instead of automatically acquiring citizenship upon their parents' acquisition of citizenship (art. 8).

The 1997 reform, which will be termed hereinafter the 1998 amendment because it came into force in 1998, tightened restrictions on dual citizenship. An option requirement was introduced so that a dual citizen had to choose citizenship before reaching the age of 22 if he or she had become a dual citizen before the age of twenty or within two years of becoming a dual citizen if he or she had become a dual citizen after reaching the age of

⁵ The EUDO Glossary on Citizenship and Nationality suggests the term 'reacquisition of nationality' for the acquisition of nationality by a former national, to which the term 'reinstatement of nationality' is applied herein in accordance with the official translation of the ROK Nationality Act (see *infra* 4.4 and 4.6).

twenty. Failure to fulfil the option requirement would result in the loss of Korean citizenship (art. 12).

One of the backgrounds of the 1998 amendment was the increase of marriage migrations. Apart from respect for the autonomy of women in citizenship acquisition, the abrogation of the automatic spousal transfer of citizenship to women upon marriage was driven by the demand for controlling marriage migrants obtaining Korean citizenship, particularly in reaction to the putative increase of marriage fraud. However, as marriage migrant women had to go through naturalisation in order to acquire citizenship, the rules on conditions for naturalisation became barriers, since marriage migrant women faced various kinds of abusive treatment. Many foreign spouses of Korean men found themselves unable to continue their marriage for the two years (if domiciled in Korea for two consecutive years) or three years (with one year of domicile in Korea) required for facilitated naturalisation because of the death of the husband, divorce due to abusive treatment by the husband, or other reasons not imputable to them. An amendment in 2004 made such spouses of citizens eligible to apply for naturalisation with the passage of the required period (two or three years). Those who failed to fulfil the period-in-marriage requirement but were fostering a child born from the marriage were also made eligible to apply for facilitated naturalisation with the passage of the period (art. 6(2)).

The 2005 amendment was designed to restrict the loss of citizenship as a means of evading military service. Since dual citizens could freely renounce their ROK citizenship, many male citizens born in the United States renounced their ROK citizenship and thereby avoided conscription even though they lived in Korea. The amendment disallows renunciation by male citizens who were born abroad to parents who had no intention of permanent residence abroad unless they have completed their military service, are exempt or disqualified from military service, or released from the military obligation for other reasons (art. 12(3)).

The 2008 amendment provided a statutory ground for nullification of naturalisation, reinstatement of nationality or nationality determination on account that the decision to confer citizenship was induced by deceit or other illegitimate means. The nullification of acquisition of citizenship had been practised before the amendment, but without a statutory ground.

The legal change in 2010, a part of which came into force in 2011, had a scale as huge as the 1998 amendment. A special naturalisation route was made available for talented people (art. 7(1)(iii)). The statutory term ‘dual nationality’ was replaced by ‘multiple nationality,’ and the strict restriction of multiple citizenship since the 1998 amendment gave way to the toleration of multiple citizenship arising from certain backgrounds. The amendment provides for the exemption of renunciation of the original foreign citizenship for persons acquiring citizenship through certain categories of special naturalisation or reinstatement of nationality, persons acquiring citizenship through facilitated naturalisation on the ground of marriage, returning adoptees acquiring citizenship by reinstatement of nationality, permanent returnees of 65 years of age or above who acquire Korean citizenship by reinstatement of nationality, and persons who have difficulty in renouncing their original citizenship. For the other groups of people who acquire Korean citizenship, the period for renouncing their foreign citizenship was lengthened from six months to one year (art. 10). Multiple citizens from birth, who had the obligation to choose citizenship before reaching a certain age, also have chances to permanently retain their multiple citizenship. They can now substitute a pledge not to exercise their foreign citizenship in Korea for the actual renunciation of the foreign citizenship (art. 12(1)). With this change was introduced the order to choose citizenship. An

order to choose citizenship should be issued to a person who has failed to fulfil the obligation of option within the designated period or who has conducted an act contrary to the pledge not to exercise foreign citizenship. In the former case, the new rule replaced the automatic loss of citizenship upon failure to choose citizenship.

The toleration of multiple citizenship has much to do with a change in the conception of multiple citizenship. Instead of enforcing mono-citizenship and driving multiple citizens to become foreigners as a result, the state chose to revalorise and place greater authority on Korean citizenship regardless of multiple citizenship. Multiple citizens should be treated only as citizens of the ROK when Korean laws are applied (art. 11-2(1)). If a law or regulation bars foreign citizens from taking a public service position, multiple citizens should renounce their foreign citizenship in order to take that position (art. 11-2(2)). Moreover, a multiple citizen can now renounce Korean citizenship when he or she is domiciled outside of Korea and by declaration communicated through the head of the ROK diplomatic or consular mission that has jurisdiction over the area of domicile (art. 14). The decision of the loss of citizenship, in other words, the deprivation of citizenship was also made possible because of the toleration of permanent multiple citizenship. The Minister of Justice may now make a decision to withdraw the ROK citizenship of a multiple citizen who has acquired the ROK citizenship after birth on account of his or her conduct prejudicial to a vital national interest or harmful to the maintenance of social order (art. 14-3).

The 2014 and 2016 amendments were for technical changes reflecting the alteration of a statutory terminology and the names of agencies.

3. The system of citizenship law and administration

3.1 The system of national legislation on citizenship

Art. 2(1) of the ROK Constitution provides that “the conditions for becoming a citizen of the Republic of Korea shall be prescribed by a statute”. The Nationality Act is the statute enacted to that effect. The Nationality Act, as last amended in 2016, has 22 articles and several addenda. In Korea, the executive has the power to submit legislative bills to the National Assembly, and most of the changes to the Nationality Act have been led by the executive. Statutory rules on citizenship can be reviewed by the Constitutional Court upon referral by a court or a constitutional complaint.

More specific rules are set down by way of a presidential decree – the Enforcement Decree for the Nationality Act. While this delegated legislation may provide for rights and obligations within the scope of mandate, the Enforcement Rules for the Nationality Act issued by the Ministry of Justice cannot govern such matters; for the most part, those rules are administrative rules that do not amount to legal rules.

One problem in rule-making for the management of citizenship affairs is that much of administration is governed by guidelines internal to the ministry. Examples are Guidelines on Nationality Administration and Guidelines on the Reinstatement of Nationality and Other Affairs for Coethnics of Foreign Nationality. The courts do not recognise these rules as legal rules, which means that those rules in themselves are outside of judicial review (e.g. Constitutional Court 2006. 03. 30. 2003HeonMa806).

3.2 International law

International treaties help to shape the content of citizenship-related laws by becoming part of Korean law or, even if not ratified or acceded to, function as standards for evaluating legislation and administrative practice. International treaties can be broken down into two kinds – treaties specifically to govern nationality-related affairs and more general human-rights conventions.

International treaties on nationality

Among the few multilateral treaties on nationality, the Convention Relating to the Status of Stateless Persons is the only one to which the ROK is a state party. The ROK acceded to the Convention in 1962. On the other hand, the ROK is not a party to the Convention on the Reduction of Statelessness. Neither is the ROK a state party to the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, which attracted ratifications and accessions even in the postwar period.

Independence from Japanese rule and the existence of diasporas in neighbouring states must have given the ROK ample reason to work towards bilateral treaties to clarify the citizenship status of Koreans in those countries, which would have recursively helped to refine its legal concept of national membership. As a matter of fact, however, the ROK has made no bilateral treaty for the purpose of determining the boundary of its citizenry. Even the arrangements for undoing the Japanese rule of Korea did not include an express agreement on citizenship.

When the ROK government was established in 1948, the Supreme Commander of Allied Powers (SCAP) in Japan observed that Koreans in Japan were in dual citizenship status and that their status should be determined by a treaty (Chung 1996: 25). The Japanese government envisaged that Koreans in Japan (*zainichi* Koreans) would be given the chance to choose between Korean and Japanese citizenship (Chung 1996: 89-90). It took the position that Koreans in Japan were Japanese citizens until the settlement of their status by a treaty. However, the Japanese government excluded Koreans from voting in elections and subjected them to alien registration (Chung 1996: 31-38). Neither was any chance to choose citizenship subsequently given to the *zainichi* Koreans. After the conclusion of the San Francisco Peace Treaty in September 1951, Japan's justice ministry issued a circular (Circular 438) declaring that Koreans (and Taiwanese) would lose their Japanese citizenship upon the entry into force of the peace treaty, despite the fact that Korea was not a state party and the peace treaty made no reference to the citizenship issue. The Japanese courts have endorsed the position manifested in the circular and held that all Koreans lost their Japanese citizenship on 28 April 1952, the day when the peace treaty came into force (Chung 1996: 89-110).⁶ While the Korean government made issue with Japan's treatment of Koreans in Japan, it did not contest the Japanese position on the citizenship question, because Korea disputed the validity of the annexation in the first place and, therefore, avoided adopting a position that would officially recognise Koreans being or having been Japanese nationals. This explains why there has been

⁶ Art. 2(a) of the treaty provides that "Japan, recognising the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet". As for Taiwan, art. 2(b) provides that "Japan renounces all right, title and claim to Formosa and Pescadores". Treaty of Peace with Japan, 1951, 136 U.N.T.S. 45. In the meantime, Japan entered into a peace treaty with the Republic of China, and the Japanese Supreme Court later ruled that Taiwanese lost their Japanese citizenship on 5 August 1952, when the peace treaty with China came into force Chung (1996: 103-104).

no international instrument between the ROK and Japan that contains an express agreement on citizenship. The only potential instrument was a Draft Agreement on the Nationality and Treatment of Koreans in Japan prepared in 1952, where the ROK confirmed that Koreans in Japan were nationals of the Republic of Korea (Chung 1996: 41). The ROK-Japan negotiations on diplomatic normalisation faltered, however, and it was only in 1965 that the two countries signed the Treaty on Basic Relations between Japan and the Republic of Korea (583 U.N.T.S. 33). The treaty was accompanied, among others, by an Agreement between Japan and the Republic of Korea Concerning the Legal Status and Treatment of the People of the Republic of Korea Residing in Japan. Unlike the Draft Agreement of 1952, this agreement contains no reference to nationality; it took for granted that the *zainichi* Koreans were ROK citizens and focused on the issue of their residency in Japan.

The ROK had no chance to enter into any treaty concerning nationality with the People's Republic of China or the Soviet Union despite the existence of ethnic Korean populations in those countries.⁷ The ROK and the countries of residence of the diasporas treat those populations according to their own citizenship laws. The ROK treats ethnic Koreans in China and the former USSR as having lost their Korean citizenship. Some ethnic Koreans from China brought a constitutional action against the government for its failure to enter into a treaty with China on the citizenship of ethnic Koreans in China, but the Constitutional Court held that the government had no obligation to make such a treaty (Constitutional Court 2006. 03. 30. 2003HeonMa806).

International human rights treaties

General international human rights instruments have had some significant influence on ROK citizenship law. The ROK's belated efforts to accomplish gender equality in citizenship law were impelled by pressures from international human rights law. The ROK was a state party to the Convention on the Elimination of All Forms of Discrimination against Women since 1985. When it acceded, it made a reservation to art. 9 of the convention to protect its *ius sanguinis a patre* in the Nationality Act.⁸ The ROK acceded to the International Covenant on Civil and Political Rights in 1990. The Nationality Act was seen as contrary to art. 3 of the covenant, which provided for the equal right of men and women in the enjoyment of civil and political rights. The ROK was a signatory to the Convention on the Rights of the Child and became a state party in 1991. The Nationality Act was regarded as at variance with art. 7(2) of the convention, which obligated states parties to ensure the right of the child to acquire nationality where the child would otherwise be stateless, because children born to Korean mothers and foreigner fathers had the danger of becoming stateless depending on the position taken by the laws of their fathers' states of citizenship. The revision of the Nationality Act in 1997 was to align the law with the international human rights principles – the move from patrilineal to bilineal *ius sanguinis*, the removal of the prohibition of the naturalisation of women separately from their husband, and the removal of the spousal transfer of citizenship to the wife automatically upon marriage and the filial/spousal extension of acquisition of citizenship automatically and concurrently upon the reference person's acquisition of

⁷ North Korea made a treaty with the USSR to deal with problems arising from dual citizenship (Ginsburgs 1983: chap. 5).

⁸ "States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband" (art. 9(1), Convention on the Elimination of All Forms of Discrimination against Women). "States parties shall grant women equal rights with men with respect to the nationality of their children" (art. 9(2)).

citizenship.

The International Convention on the Elimination of All Forms of Racial Discrimination, to which the ROK acceded in 1979, prohibits racial discrimination in the enjoyment of the right to nationality (art. 5(d)(iii)), but at the same time precludes legal provisions concerning nationality, citizenship or naturalisation from the scope of the convention as long as such provisions do not discriminate against any particular nationality (art. 1(3)). It would be interesting to ask whether the facilitated routes of citizenship acquisition for former citizens and their offspring in ROK citizenship law constitute a scheme of ethnic preference and to evaluate it in light of international norms such as the above convention. It is unlikely, however, that the ROK's rules and practices will be judged as contrary to international law, as far more manifest ethnic preference rules are permitted under the above convention (Joppke 2005: 221).

The ROK acceded to the Convention Relating to the Status of Refugees in 1993. The convention provides for a loose obligation to facilitate the naturalisation of refugees (art. 34). Under the Nationality Act, refugees who have obtained lawful status to stay are eligible for ordinary naturalisation.

3.3 The organisational structure of citizenship administration

The Ministry of Justice has responsibilities over citizenship and immigration affairs. All administrative decisions on citizenship and immigration are made in the name of the Minister of Justice. Among the organisations within the Ministry of Justice is the Korea Immigration Service (KIS), which administers citizenship and immigration affairs including asylum. The KIS has nine divisions, and citizenship affairs are assigned to the Nationality Division.

Citizenship affairs have been within the jurisdictional scope of the justice ministry from the beginning, whereas immigration administration was under the jurisdiction of the Ministry of Foreign Affairs until 1961. Even after immigration administration was brought within the arms of the Ministry of Justice, citizenship administration remained in the hands of the Legal Affairs Division in the Office of Legal Affairs separately from immigration affairs, which were administered by the Immigration Bureau. It was in 2006 when citizenship administration came under the Immigration Bureau, which was reorganised into the Korea Immigration Service (KIS) in 2007. The independence of the KIS from the justice ministry often comes on the agenda in discussions of administrative reform.

Decisions on citizenship affairs made by the Minister of Justice can be challenged through administrative appeals heard by the Central Administrative Appeals Commission in the Anti-Corruption and Civil Rights Commission and/or administrative legal actions before administrative courts, whose decisions can be appealed to a High Court and finally to the Supreme Court. The Seoul Administrative Court plays the central role in constructing citizenship jurisprudence. Administrative decisions can also be set aside by the Constitutional Court upon constitutional complaints if those decisions constitute “unconstitutional exercises of public power”.

4. Acquisition of citizenship

4.1 Acquisition of citizenship by birth

In the ROK, the primary mode of acquisition of citizenship at birth is *ius sanguinis*. Persons acquire citizenship *iure soli* only in exceptional circumstances.

Ius sanguinis

Art. 2(1) of the Nationality Act provides that the following person acquires ROK citizenship at birth.

- i) a person whose father or mother is a ROK citizen at the time of his or her birth; or
- ii) a person whose father was a ROK citizen at the time of his death if the father died before the birth of the person acquires ROK citizenship at birth

Before this bilinear *ius sanguinis* rule came into force in 1998, a court hearing the case of a person born to a North Korean woman and a Chinese man referred the question on the constitutionality of the existing patrilineal *ius sanguinis* (a *patre*) rule to the Constitutional Court. The Constitutional Court observed that the rule violated the constitutional principle of equality (art. 11(1)), but dismissed the complaint on that count because the law had already been amended before the decision (Constitutional Court 2000. 8. 31. 97HeonGa12).

As in the laws of many countries, persons born out of wedlock may face difficulty in acquiring citizenship *iure sanguinis*. Apart from very exceptional circumstances, a person born to a citizen mother and a foreigner father out of wedlock acquires citizenship without difficulty, as the maternal relationship is recognised by pregnancy and childbirth. On the other hand, a person born to a citizen man and a foreigner mother out of wedlock does not acquire citizenship by operation of law, but needs the father's acknowledgment, as the paternity out of wedlock can only be recognised by acknowledgment.⁹

Persons born abroad acquire citizenship *iure sanguinis* without restriction. A draft amendment in 1992 contained a provision requiring declaration to retain citizenship for persons born abroad, but strong objection from non-resident citizens, particularly Koreans in Japan, thwarted the amendment (Chung 1997).

Ius soli

Acquisition of citizenship *iure soli* is recognised only in exceptional circumstances. Only those whose parents are unknown or are stateless can acquire citizenship *iure soli* (art. 2(1)(iii)). A foundling is presumed to have been born in the ROK and acquires citizenship *iure soli* (art. 2(2)).¹⁰

This exceptional *ius soli* rule is under-inclusive in that children whose parents are not stateless can nevertheless become stateless depending on the laws of their parents' states

⁹ The private international law issue of which country's law governs the legality of a particular marriage and the maternal or paternal relationship is not discussed here.

¹⁰ Compare this with sect. 4(2) of Germany's Nationality Act, which provides that "a child which is found on Germany territory (foundling) shall be deemed to be the child of a German until otherwise proven".

of citizenship. Art. 1(1) of the Convention on the Reduction of Statelessness and art. 6(2) of the European Convention on Nationality, which provide that nationality should be given to a person born in its territory who would otherwise be stateless, is a guidance for future legislation against statelessness.

4.2 Acquisition of citizenship by acknowledgment

By acknowledgment one recognises a person born out of wedlock as his or her offspring. For one to acquire citizenship by acknowledgment, the following conditions should be met (art. 3(1), Nationality Act).

- The person should be a minor under the Civil Act, that is, eighteen years of age or younger, at the time of the acknowledgment.
- The acknowledging parent should be a citizen at the time of the person's birth.
- The acknowledging parent should be a citizen at the time of the acknowledgment.

The person acquires citizenship when the acknowledgment is reported to the Minister of Justice (art. 2(2)). Acknowledgment can be conducted according to foreign laws, depending on circumstances prescribed by the Act on Private International Law. Under Korean civil law, one can be acknowledged before birth and acquire citizenship at birth if the acknowledgment is reported before birth.

Many children born to Philippine women and Korean men (so-called Kofinos) or to Vietnamese women and Korean men (so-called Lai Đại Hàn) out of wedlock fail to acquire ROK citizenship because their fathers refuse to acknowledge them. A legal action for acknowledgment is an available remedy, and there have been some successes.

4.3 Acquisition of citizenship by naturalisation

Naturalisation (*gwiwhwa*) is the principal mode of acquisition of citizenship after birth. Cases of naturalisation did not exceed one hundred per year until the mid-1990s. The frequency has spectacularly increased since the beginning of the new millennium. Now over 10,000 persons are naturalised each year (see Table 2 and Figure 1 in 4.8).

There are three types of naturalisation – ordinary, facilitated, and special naturalisation. Facilitated naturalisations account for the largest percentage of all naturalisation cases (see Table 4). Many rules of law formed through judicial decisions on one type of naturalisation apply to other types of naturalisation and also to the reinstatement of nationality.

Ordinary naturalisation

A foreigner who does not qualify for other types of naturalisation or reinstatement of nationality may acquire citizenship by satisfying the following conditions (art. 5, Nationality Act).

- The person has been domiciled in the ROK for five consecutive years or more.

- The person has reached majority according to the Civil Act.
- The person has good conduct.
- The person can maintain livelihood by his or her own assets or ability or by depending on his or her family.
- The person has basic knowledge required of a ROK citizen including Korean language proficiency and understanding in Korean customs.

The Nationality Act simply provides that one needs to be domiciled in the ROK for five consecutive years or more, but an article in the Enforcement Rules for the Nationality Act requires lawful entry, alien registration, and lawful stay for five years or more. Departure and re-entry within a month for the purpose of obtaining a new visa or similar circumstances recognised by the Minister of Justice does not constitute a break in continuity of domicile. In such a case, the periods before and after the intervening departure and re-entry can be added to satisfy the five-year threshold (art. 5, Enforcement Rules for the Nationality Act).

There are frequent naturalisation applications from foreigners who hold visas that are not designed to allow for residence beyond a limited number of years by multiple renewals, such as E-9 (guestworkers admitted through the Employment Permit system), H-2 (coethnic guestworkers admitted through the Working Visit scheme) and G-1 holders (persons permitted to stay temporarily for asylum application, legal proceedings or for treating infirmity).¹¹ In many of those cases, the applicant switches his or her status from E-9 or H-2, which allows for a maximum stay of four years and ten months, to G-1 before application in order to extend his or her stay over the five-year threshold. Against the administrative practice of disqualifying such visa holders from applying for naturalisation, the courts have decided that no particular visa type is precluded when judging whether the minimum domicile period requirement has been fulfilled. On the other hand, the courts have held that it is within the scope of lawful discretion not to approve naturalisation in consideration of the nature of the visa status held by the applicant (Supreme Court 2010. 7. 15. 2009Du19069; 2010. 10. 28. 2010Du6496).

The ‘good conduct’ requirement is broader than a clean criminal record. In one case, the court pointed to repetitive filings of complaints, the recording of an interview, refusal to submit a certificate of no criminal conviction, and refusal to sing the national anthem during interview as legitimate reasons for refusing naturalisation (Seoul Administrative Court 2010. 7. 2. 2009GuHap21567). The administration is strict against drunk driving or driving without licence. Yet an immigration offence record is not an absolute bar. While using a passport with a different name is regarded as an offence serious enough to refuse naturalisation, a record of overstaying or staying without a proper visa does not necessarily result in refusal decision (Seoul Administrative Court 2010. 7. 23. 2009GuHap50422; 2010. 9. 2. 2009GuHap17618; 2011. 12. 8. 2011GuHap19079; Seoul High Court 2012. 7. 18. 2012Nu1206).

Details of the livelihood requirement are prescribed in the Enforcement Rules for the Nationality Act in the form of a list of documents to be submitted (art. 3(2)(ii)). The applicant should submit a certificate of an income in excess of the GNI per capita, a financial certificate of 60 million Korean won or more, or a real property registration record for an asset exceeding 60 million won or more or a real property tenancy contract document proving a rent deposit of 60 million won or more. Such a document can be substituted for by a

¹¹ While a visa is only for entry clearance and differs from ‘status to stay’ in the country, the two terms will be used interchangeably in this report, as the two have identical categories.

certificate of employment or other types of document recognised by the Minister of Justice as equivalent to the above three types of document. As will be seen, the livelihood threshold is lower for facilitated naturalisation, and this lower threshold applies to applicants who are Koreans (coethnics) of foreign nationality under the Act on the Immigration and Legal Status of Overseas Koreans (Overseas Koreans Act).

The applicant should also submit a letter of recommendation. A list of types of persons qualified to write a recommendation is provided in the Enforcement Rules for the Nationality Act and Guidelines on Nationality Administration.

The applicant's basic knowledge for citizenship, namely language proficiency and understanding in customs, is examined through a naturalisation test, which will be explored shortly.

Facilitated naturalisation

Four categories of people are eligible for facilitated naturalisation. The following three categories of persons are eligible to apply after being domiciled in the ROK for three consecutive years or more (art. 6(1), Nationality Act).

- A person whose father or mother was a ROK citizen
- A person born in the ROK whose father or mother was born in the ROK
- A person adopted by a ROK citizen who had reached majority under the Civil Act of the ROK by the time he or she was adopted.

Facilitated naturalisation for offspring of former ROK citizens is used by ethnic return migrants from China for acquiring citizenship.

The last but the most significant category is the spouses of citizens. As mentioned, until 1998 the wife of a citizen man did not need to be naturalised, because she automatically acquired citizenship. The 1998 amendment made this route of naturalisation available to both sexes and repealed the automatic acquisition of citizenship upon marriage (automatic spousal transfer of citizenship). Women still account for a larger percentage of people who acquire citizenship through this route. Spousal naturalisations make up a great majority of all naturalisation cases (see Table 5 in *infra* 4.8). The ROK's rules on spousal naturalisation may be less restrictive than those of many European countries (Lee 2014).

According to art. 6(2)(i) and (ii) of the Nationality Act, a person whose spouse is a ROK citizen may acquire citizenship by naturalisation provided that

- the person has been domiciled in the ROK for two consecutive years or more while in marriage with the said spouse, or
- the person has been in marriage with the said spouse for three years or more and has been domiciled in the ROK for a year or more while in marriage with that spouse.

An academic commentary interprets the law as only requiring certain duration of marriage before application and not the continuation of marriage until the time of application (Seok 2011: 149-150). This is at variance with the practice of the Ministry of Justice requiring the presence of the couple in the interview. The Ministry of Justice (2010b: 32) takes the position that the applicant should be in marriage with the reference person at the time of applying for naturalisation. There are conflicting court decisions as to whether the applicant should be in marriage with the reference person until the naturalisation decision

(Seoul Administrative Court 2008. 9. 2. 2008GuHap22716; 2010. 7. 23. 2009GuHap50442). The problem with the view that the marriage should continue until the decision is that the duration of marriage is contingent on the pace of administration and the rule and standard of practice become unclear in addition to the difficulty of checking the marriage status after the completion of the screening procedure.

As mentioned in 2.3, many foreign women married to Korean men, particularly wives from Southeast Asia, found themselves unable to continue their marriage throughout the period required for naturalisation because of the death of the husband, divorce due to abusive treatment by the husband, or other reasons for which they were not responsible. Hence, in 2004 two subparagraphs (iii and iv) were inserted in art. 6(2) to make the following two categories of persons eligible for naturalisation.

- A person who has failed to fulfil the in-marriage-period requirement in subparagraph (i) or (ii) – two years (if domiciled in Korea) or three years (with one year of marriage and domicile in Korea) – because of the spouse’s death, missing or a reason for which the person is not responsible and who has been domiciled in the ROK for the required period
- A person who has failed to fulfil the in-marriage-period requirement in subparagraph (i) or (ii), but is fostering, or should foster, a minor child born from that marriage and who has been domiciled in the ROK for the required period

Such a person is not automatically eligible, but needs to have his or her circumstance recognised by the Minister of Justice.

Facilitated naturalisation applicants should also fulfil the requirements of age (majority), lawful entry and residence, good conduct, livelihood, and basic knowledge for citizenship. Applications from holders of temporary (G-2) or guestworker visas (H-2 or E-9) are frequent, particularly by persons whose parents are former citizens. As mentioned, the courts take the position that no particular visa types are precluded, but do not find fault with refusal decisions based on the consideration of the nature of the visa status as a decisive ground for refusal.

In facilitated naturalisation for marriage migrants, the genuineness of marriage is the most important element of good conduct. Marriage fraud may constitute a crime, namely the crime of causing the entry of false information on the original deed of a public document or a public electronic record (art. 228, Criminal Act), and is a frequent ground for refusing naturalisation. But the courts take a more generous approach if an originally fake marriage develops into a substantive marital relationship. In such a case, the criminal court may withhold sentence and the administrative court may be generous when judging whether the good conduct requirement has been satisfied (Seoul Administrative Court 2013. 1. 31. 2012GuHap16237; 2013. 5. 9. 2012GuHap35641).¹²

Marriage-migrant applicants for facilitated naturalisation are treated with greater leniency when immigration offences are concerned. Guidelines on Nationality Administration (art. 12) provide for ‘humanitarian’ considerations and apply somewhat relaxed procedural requirements to the spouses of citizens applying for facilitated naturalisation who have failed to fulfil the domicile requirement because of reasons not attributable to them (art. 6(2)(iii) and (iv), Nationality Act), because such spouses have greater likelihood of violating immigration rules, such as overstaying their visas, because of reasons for which they cannot

¹² See Kim (2016: 1545-1546) for examples showing the judiciary’s view of how to distinguish genuine from fraudulent marriages.

be held responsible.

The livelihood requirement for facilitated naturalisation is lower than that for ordinary naturalisation. The threshold is 30 million Korean won, instead of 60 million won, worth of financial asset, the same amount of real property or rent deposit, a commensurate employment status, or any other economic status recognised by the Minister of Justice as commensurate (art. 3(2)(ii), Enforcement Rules for the Nationality Act).

Special naturalisation

The following three categories of persons are eligible for special naturalisation, which does not require a minimum period of domicile, a minimum age (majority) and the ability to maintain livelihood (art. 7, Nationality Act).

- A person whose father or mother is a ROK citizen and who has not been adopted after reaching majority under the Civil Act of the ROK
- A person who has made a special contribution to the ROK
- A person who has excellent ability in a specific field, such as science, the economy, culture and sport, and who is expected to contribute to the national interest of the ROK

Special naturalisation for offspring of citizens is now used for the chain migration and naturalisation of original family members of immigrants who have acquired citizenship. Hence, while this route of naturalisation is for people having blood ties with citizens, it is used as a channel for people of non-Korean ethnic origins to acquire ROK citizenship.

The law requires that the citizen parent should possess citizenship at the time of naturalisation application. The court went even further in one case in which the administration refused the naturalisation of a person whose citizen parent had passed away before the decision. It held that the citizen parent's existence up to the time of naturalisation decision was requisite for special naturalisation (Seoul Administrative Court 2013. 8. 30. 2013GuHap4132).

A person who has made a special contribution to the country is a person who falls under any of the following categories (art. 6(1), Enforcement Decree for the Nationality Act).

- A person who himself or herself, whose spouse, or any of whose direct ascendants or direct descendants has rendered a distinguished service to national independence as prescribed by art. 4 of the Act on the Honourable Treatment of Persons of Distinguished Services to Independence
- A person who himself or herself, whose spouse, or any of whose direct ascendants or direct descendants has rendered a distinguished service to the country as prescribed by art. 4 of the Act on the Honourable Treatment and Support of Persons of Distinguished Services to the State and has been awarded for that service
- A person who has made a contribution to the national interest of the ROK in any of such various fields as national security, society, the economy, education and culture
- A person who has made a contribution recognised by the Minister of Justice as equivalent to the above.

Many descendants of patriots who had taken asylum in other countries and fought for Korean independence have returned to Korea through this route. Since there is no generation

cut-off, great-great-grandchildren of patriots benefit from this privileged access to citizenship. While the Nationality Act and its enforcement decree give this privilege only to the patriot himself or herself, his or her spouse, and direct ascendants and descendants, Guidelines on the Reinstatement of Nationality and Other Affairs for Coethnics of Foreign Nationality extends the benefit to daughters-in-law.

The talent privilege provision was inserted by the 2010 amendment. “A person who has excellent ability in a specific field, such as science, the economy, culture and sport, and who is expected to contribute to the national interest of the ROK” needs to get a recommendation from a certain kind of person prescribed in the Enforcement Decree and specified in a notice issued by the Minister of Justice, such as the head of a central or local government organisation and a university president, or to be referred by the Minister of Justice to deliberation by reason of the international recognition of his or her award, research outcome or career in such various fields as science, the economy, culture and sport.¹³ The decision is made by the Minister of Justice following deliberation and a resolution by the Nationality Deliberation Committee (art. 6(2), Enforcement Decree for the Nationality Act).

Special naturalisation does not require a minimum period of domicile, a minimum age (majority), and the ability to maintain livelihood. Yet good conduct remains a requirement. False information about contribution to national independence often results in refusal of naturalisation on account of failure to satisfy the good conduct requirement (Seoul Administrative Court 2012. 12. 14. 2012GuHap22423). Yet experience suggests that the actual criteria for evaluating conduct are more relaxed than in other types of naturalisation. In the special naturalisation of those whose parents are citizens, that the base of family life is in the ROK is a positive consideration that offsets a record contrary to good conduct (Lee 2016: 283).

The Nationality Act does not exempt special naturalisation applicants from the basic knowledge requirement. Yet applicants for special naturalisation on account of special contributions to the ROK or parents’ citizenship (if the applicant lives with the citizen parent) can be exempt from the written test and possibly the interview as well (art. 4(3), Enforcement Rules for the Nationality Act; art. 8(1), Guidelines on Nationality Administration).

Procedures for naturalisation

The necessary documentations for naturalisation application are stipulated for by the Enforcement Decree and the Enforcement Rules for the Nationality Act, Guidelines on the Reinstatement of Nationality and Other Affairs for Coethnics of Foreign Nationality, and Guidelines on Nationality Administration. Amidst a biological turn in immigration and citizenship administration, DNA testing results are often submitted to support the allegation of family ties (Lee 2012; Kim 2011). There is no limit on the number of applications. Hence, one can reapply any number of times after a refusal decision.

The administration may refuse to accept an application because of failure to comply with procedural rules. The administration was criticised for refusing to accept applications by reference to such substantive issues as whether the applicant satisfied the domicile or livelihood requirement. The criticism drove away such practice, and substantive issues are examined through the main screening procedure.

¹³ The justice ministry sets down a list of potential recommenders and detailed criteria for referral for deliberation and resolution by way of this notice, which is revised from time to time. The latest notice is Notice 2016-276 issued on 12 September 2016.

Various screening methods are employed, including personal identity examination, criminal record examination, and residence and activity screening. Residence and activity screening can be conducted on site at or around the residence of the applicant. Any finding of failure to satisfy a substantive requirement may result in a refusal decision prior to the basic knowledge test.

The naturalisation test for assessing basic knowledge consists of a written test and an interview. The written test is to evaluate language proficiency and knowledge of Korean history, politics, culture and customs. The standard of the test is set for the level of grade 4-6 at primary school. The written test can be waived for one of the spouses who simultaneously applied for naturalisation, minors, persons of 60 years of age or older, applicants for special naturalisation on account of contributions to national independence or to other benefits of the country, talented people applying for special naturalisation, persons who have completed the Social Integration Programme introduced by the justice ministry, and persons whose special circumstances have been recognised by the Minister of Justice (art. 4(1), Enforcement Rules for the Nationality Act).

The interview is to test language proficiency, the attitude as a citizen, and commitment to the free democratic basic order. The interview can be waived for the spouses of persons whose citizenship has been reinstated and who are 60 years of age or older, children under the age of fifteen at the time of application, persons who have completed the Social Integration Programme, and persons whose special circumstances are recognised by the Minister of Justice (art. 4(3), Enforcement Rules for the Nationality Act). The people recognised as being in special circumstances include persons who made contributions to national independence or to other benefits of the country and the spouses of Koreans from Sakhalin who have had their Korean nationality ascertained and who are 60 years of age or older (art. 8(1), Guidelines on Nationality Administration).

The list of people who can be exempt from the written test or interview changes from time to time. Before 2010, applicants for facilitated naturalisation who were the spouses of citizens were exempt from the interview. Now they can still enjoy exemption by completing the Social Integration Programme.

Naturalisation decision

Art. 4(1) of the Nationality Act provides that “a foreigner who has never acquired the nationality of the Republic of Korea may acquire the nationality of the Republic of Korea by obtaining the approval of naturalisation from the Minister of Justice”. Art. 4(2) stipulates that “where the Minister of Justice receives an application for the approval of naturalisation, the Minister of Justice shall examine whether the requirements for naturalisation under arts. 5 through 7 have been fulfilled and approve naturalisation only if the person has fulfilled those requirements”. What is described here as ‘approval’ of naturalisation is literally close to ‘permission’ of naturalisation in Korean terminology.¹⁴ Naturalisation is granted by the state rather than obtained as of right. Yet that the Minister of Justice should examine whether the applicant has fulfilled the requirements prescribed by the law and approve naturalisation if the person has fulfilled the requirements provokes the question of whether the Minister of

¹⁴ The KLRI has adopted the translation ‘naturalisation permission’ for the term *gwihwa heoga* in the Nationality Act. *Heoga* in this context corresponds to the German term *Genehmigung*, for which ‘authorisation’ may be a better translation than both ‘approval’ and ‘permission.’ But this report uses the translation ‘approval,’ which is more commonly used in the United States and the United Kingdom.

Justice should approve naturalisation if the applicant has fulfilled the requirements – a minimum period of domicile, livelihood, good conduct and basic knowledge. A few lower court decisions seem to hold that the Minister of Justice is bound to approve naturalisation as long as the requirements have been satisfied (Seoul Administrative Court 2009. 8. 20. 2008GuHap51400; Seoul High Court 2009. 10. 6. 2009Nu11135; 2010. 3. 25. 2009Nu27512). Yet the established case law is that the Minister of Justice has ‘broad discretion’ in deciding whether to approve naturalisation. Indeed, the question of whether the requirements have been satisfied itself necessitates discretion. The good conduct requirement is a case in point. As mentioned, the administration cannot arbitrarily preclude a certain visa status when judging whether the applicant has fulfilled the minimum period of domicile, but may consider the nature of the person’s status in deciding whether to admit the person (Supreme Court 2010. 7. 15. 2009Du19069; 2010. 10. 28. 2010Du6496). In other words, the applicant’s visa status can be taken seriously in judging whether the person has established ‘a firm base of living’ in the ROK (Seoul High Court 2010. 12. 23. 2010Nu22803; 2011. 3. 29. 2010Nu37256; 2011. 7. 21. 2010Nu37690).

On the other hand, the administration should exercise discretion within limits. The courts are of the position that “whether discretion has been exercised within the bounds of reasonableness should be examined individually and concretely in respect of each issue in question” (Supreme Court 2013. 10. 31. 2013Du16784). Thus the courts may annul a refusal decision made by the justice minister “if there is no special reason why the applicant should not be admitted as a member of the [Korean] society” (Seoul Administrative Court 2013. 10. 24. 2012GuHap33317). When a court annuls a refusal decision, it does so by declaring that the constituted a deviation from the permitted scope of discretion or an abuse of discretion.

As Table 6 (*infra* 4.8) shows, approval decisions outnumber refusal decisions, although the percentage of refusal decisions is on the increase. The average ratio of approval decisions to refusal decisions during 2011-2015 was around 10 : 6. The ratio of refusal decisions was far lower in the previous years. Only a very limited proportion of refusal decisions are taken to court. Like the courts of major immigration countries, the ROK courts show deference to the executive’s decisions on immigration matters. One study found that out of 141 cases for contesting naturalisation decisions filed in the Seoul Administrative Court between 2003 and 2015, the court decided in favour of the plaintiff (naturalisation applicant) in only 24 cases (17 percent) (Kim 2016).

The legal status of naturalised citizens

The applicant acquires citizenship at the time when the Minister of Justice make the decision to approve naturalisation. The naturalised citizen is immediately entered on the Family Registry.

As will be seen in detail, a naturalised citizen has the obligation to renounce his or her previous citizenship within one year of acquiring ROK citizenship, which can, for some categories of persons, be substituted for by a pledge not to exercise their foreign citizenship in the ROK. Until the naturalised citizen renounces his or her other citizenship or makes a pledge not to exercise foreign citizenship, the person may enjoy limited treatment as a citizen in entry and departure, stay, resident registration and the issuance of a passport, if laws governing such administration so provide (art. 14, Enforcement Decree for the Nationality Act).

Until the 1963 amendment, a naturalised citizen and the wife and offspring of a naturalised citizen, along with a person who acquired citizenship by becoming the wife of a

citizen and a person who concurrently and automatically acquired citizenship by spousal or filial transfer of citizenship, were barred from becoming President, Vice-President, a member of the State Council, an ambassador extraordinary and plenipotentiary, the Commander-in-Chief of the ROK Armed Forces, and the Chief of Staff of the Army, Navy or Air-Force. Now naturalised citizens are treated equally except in very limited circumstances. They are exempt from conscription unless they choose to perform military service in the same way as ordinary citizens (art. 136(1)(ii), Enforcement Decree for the Military Service Act). As will be seen, multiple citizens who became citizens after birth may lose their ROK citizenship upon a decision of the government by reason of conduct prejudicial to the national interest or social order.

4.4 Acquisition of citizenship by reinstatement of nationality

The EUDO Glossary on Citizenship and Nationality recommends the term ‘reacquisition of nationality’ for the acquisition of citizenship by former citizens. The Nationality Act provides for two modes of such acquisition, and the predominantly more important mode of the two is what is described here as ‘reinstatement of nationality.’ The Korean term is *gukjeok hoebok*, which literally coincides with ‘recovery’ of nationality, which is the terminology adopted by the European Convention on Nationality (art. 9).

The reinstatement of nationality is a procedure and decision through which a former citizen acquires ROK citizenship. The requirements for reinstatement of nationality are prescribed in a negative way. The Minister of Justice shall not approve the reinstatement of nationality

- if the applicant has committed an act harmful to the state or society;
- if the applicant does not have good conduct;
- if the applicant renounced or lost citizenship in order to evade military service; or
- if the Minister of Justice recognises that the approval of the reinstatement of nationality is inappropriate in view of national security, the maintenance of social order or public welfare (art. 9(2), Nationality Act).

Only foreigners who were formerly citizens are eligible for reinstatement of nationality. Many ethnic Koreans who are citizens of the People’s Republic of China acquire ROK citizenship by reinstatement of nationality. Until 1997, the ROK did not openly recognise the Korean minority in China (*chaoxianzu* in Chinese, *joseonjok* in Korean) as having lost Korean citizenship (Lee 2012). In 1997, the Ministry of Justice issued Guidelines on the Nationality Affairs of Coethnics from China, where it regarded the Korean minority in China (hereinafter Korean Chinese) as having lost ROK citizenship on 1 October 1949. This provision was carried over into the 2005 Guidelines on the Reinstatement of Nationality and Other Affairs for Coethnics of Foreign Nationality (art. 3). As a result of this legislative decision on nationality status, Korean Chinese born before 1 October 1949 may apply for reinstatement of nationality, while those born on or after that date need naturalisation in order to acquire ROK citizenship.

Unlike ordinary and facilitated naturalisation, there is no residence requirement for reinstatement of nationality. Nor are basic knowledge of the country and language proficiency examined through a written test and interview. But personal identity examination, criminal record examination, and residence and activity screening are conducted. The

examination of the military service record is important in reinstatement of nationality, because the renunciation or loss of ROK citizenship for the purpose of evading military service is a negative factor par excellence. Applicants for reinstatement of nationality should provide evidence showing that they were ROK citizens. The family registry has been an important means of recording citizens' identities, but many Korean Chinese lack such a record. Official documentations from the country of citizenship are also important means of proof of who the person is. Family ties with citizens often need to be proven, and biometric information, such as DNA testing results, is widely used.

The decision to approve reinstatement of nationality is also a discretionary act, but it is agreed that lower standards of scrutiny apply to the reinstatement of nationality compared with naturalisation because it is for persons who once were citizens (Seoul High Court 2013: 359).

A person who recovers his or her citizenship by reinstatement of nationality also has the obligation to renounce his or her previous citizenship, which can be substituted for by a pledge not to exercise foreign citizenship inside the ROK

- if the person qualifies for the talent privilege or the special contribution privilege as in special naturalisation;
- if the person was adopted to a foreign state before reaching majority, acquired foreign citizenship, and has continuously lived abroad; or
- if the person is 65 years of age or above and has permanently returned from a foreign state (art. 10(2)).

4.5 Concurrent acquisition of citizenship

Until 1998, concurrent acquisition of citizenship in the Nationality Act meant the automatic and involuntary acquisition of citizenship by the wife or minor child of a person who acquired citizenship (spousal and filial extension of acquisition of citizenship). Now the wife's acquisition of citizenship is separate from that of her husband, and only the minor child acquires citizenship concurrently with his or her parent and by application rather than automatically. A minor child may make an application for concurrent acquisition of citizenship simultaneously with the naturalisation application of his or her father or mother, and acquires citizenship at the same time that the parent acquires citizenship (art. 8, Nationality Act). Unlike in the pre-1998 law, the child should be a minor under Korean law. Before 1998, the child had to be a minor under the law of his or her state of origin.

4.6 Reacquisition of citizenship

What is literally translated as the 'reacquisition of nationality' in the ROK Nationality Act is a limited mode of acquisition of citizenship by former nationals, and should not be identified with the 'reacquisition of nationality' in the EUDO Glossary on Citizenship and Nationality, which encompasses 'reinstatement of nationality' and 'reacquisition of nationality' in the Korean law.

The reacquisition (*jaechwideuk*) of nationality is a procedure for persons who once acquired ROK citizenship and lost it because of their failure to perform the acts required to

retain their ROK citizenship – renouncing their other citizenship or making the pledge not to exercise their other citizenship in the ROK within one year after the acquisition of ROK citizenship. Such persons can reacquire ROK citizenship by renouncing their foreign citizenship and reporting it to the Minister of Justice within one year of losing their ROK citizenship (art. 11, Nationality Act).¹⁵

4.7 Nationality determination

Nationality determination is not a mode of acquiring citizenship.¹⁶ It is to examine and ascertain whether a person possesses ROK citizenship. It was first introduced in the early 1990s, when ethnic Koreans from China began to migrate to the ROK. The government gave lawful status to only a small minority of them and admitted only a very tiny percentage of Korean Chinese as ‘permanent returnees.’ The permanent returnees were immediately recognised as citizens of the ROK. Most of them were descendants of independence campaigners who had taken asylum in China. Instead of treating them as foreigners and making them eligible to acquire ROK citizenship by naturalisation or reinstatement of nationality, the government ascertained their ROK citizenship through ‘nationality determination,’ which the Ministry of Justice introduced without a statutory ground. It was in 1998 that nationality determination was inserted in the Nationality Act (now Art. 20). At the same time, the government abolished the ‘permanent return’ scheme for Korean Chinese and no longer treated them as possessing ROK citizenship (Lee 2012: 89-92). As mentioned, on the ground of Guidelines on the Nationality Affairs of Coethnics from China, the Ministry of Justice regarded Korean Chinese as having lost their ROK citizenship on 1 October 1949. Hence, there was no need to use nationality determination for Korean Chinese. Instead, it became a procedure for the following two groups of people.

The first are persons who claim to be citizens of North Korea and therefore citizens of the Republic of Korea. An ‘escapee from North Korea’ may have his or her North Korean citizenship recognised through ‘protection’ under Act on the Protection and Settlement Support of Residents Escaping from North Korea. The escapee can enter the ROK if he or she obtains ‘temporary protection.’ The person then goes through a procedure of identification and, if successful in proving his or her identity, secures a ‘protection’ decision, which ascertains the fact of his or her being an escapee from North Korea and his or her possession of ROK citizenship. Yet many people who claim to be from North Korea cannot avail themselves of ‘protection’ as escapees. Temporary protection and therefore admission into South Korea can be refused if the applicant has lived in a foreign country for ten years or more, or for various other reasons (Lee 2015: 26-27). Some people who have been admitted into South Korea and subjected to the identification procedure fail to be recognised as ROK citizens because of lack of proof. Such people may apply for nationality determination.

The second are Koreans from Sakhalin, who were forcibly taken to the island by Japan for wartime labour or for military reasons and their descendants. After the Second World War, the Soviet authorities treated Sakhalin Koreans as stateless and the Japanese

¹⁵ As mentioned, the reacquisition of nationality in the EUDO Glossary on Citizenship and Nationality corresponds to what is translated in this report as reinstatement of nationality. But it is also construed as including what is described here as the reacquisition of citizenship.

¹⁶ What is translated here as ‘nationality determination’ (*gukjeok panjeong*) is translated as ‘nationality adjudication’ in the KLRI translation of the Nationality Act. The translation ‘adjudication’ is misleading, because what should be signified by the term is not a judicial decision.

treated them as having lost Japanese nationality as a result of the San Francisco Peace Treaty of 1951. While some Sakhalin Koreans acquired the citizenship of the USSR or North Korea, others remained without any effective citizenship. Regardless of their legal status, the ROK government has introduced a uniform criterion in handling their affairs. The government treats those who were forcibly taken to Sakhalin before 15 August 1945 and their descendants who were born before 15 August 1945 as possessing ROK citizenship and let them have their citizenship ascertained by nationality determination. Those who were born on or after 15 August 1945 are assumed to have lost ROK citizenship or have never been ROK citizens, but in one case the court declared that even a person who was born after 15 August 1945 possessed ROK citizenship if she had not voluntarily acquired another nationality and that she could have her citizenship ascertained by a declaratory judgment of a court as well as nationality determination (Seoul Administrative Court 2014. 6. 19. 2012GuHap26159).

The nationality determination procedure commences with an application. The application can be submitted only in the ROK. The Ministry of Justice examines among others the applicant's identity, family ties, emigration background and process, possible possession of the citizenship of another country, criminal record, residence and activities (arts. 23-24, Enforcement Decree for the Nationality Act).

If the Ministry of Justice issues a decision that the applicant is an ROK citizen, the person may enter himself or herself on the Family Register and enjoy the rights of a citizen without a further administrative decision. If the ministry is not satisfied that the applicant is an ROK citizen, it makes a 'non-possession of nationality' decision. Unlike a refusal of naturalisation or reinstatement of nationality, this decision is not a justiciable administrative decision (*Verwaltungsverfügung*). Therefore, one cannot contest the decision in court (Seoul Administrative Court 2012 2. 17. 2011GuHap22051). The decision is simply to signify that the Ministry of Justice cannot ascertain that the person is a citizen; it is not an act of changing the status of the person.

4.8 Statistical overview of the acquisition of citizenship: Naturalisation and reinstatement of nationality

The Korea Immigration Service, Ministry of Justice, publishes statistical data monthly and annually. Monthly reports contain fewer items of information than yearbooks, and yearbooks do not organise information on the same items each year. The statistical information in this sub-section comes from the Statistical Yearbooks of 2005 through 2015 and the Monthly Statistical Report of December 2016.

The following table shows the number of cases of acquisition of citizenship by naturalisation and reinstatement of nationality between 1991 and 2016.

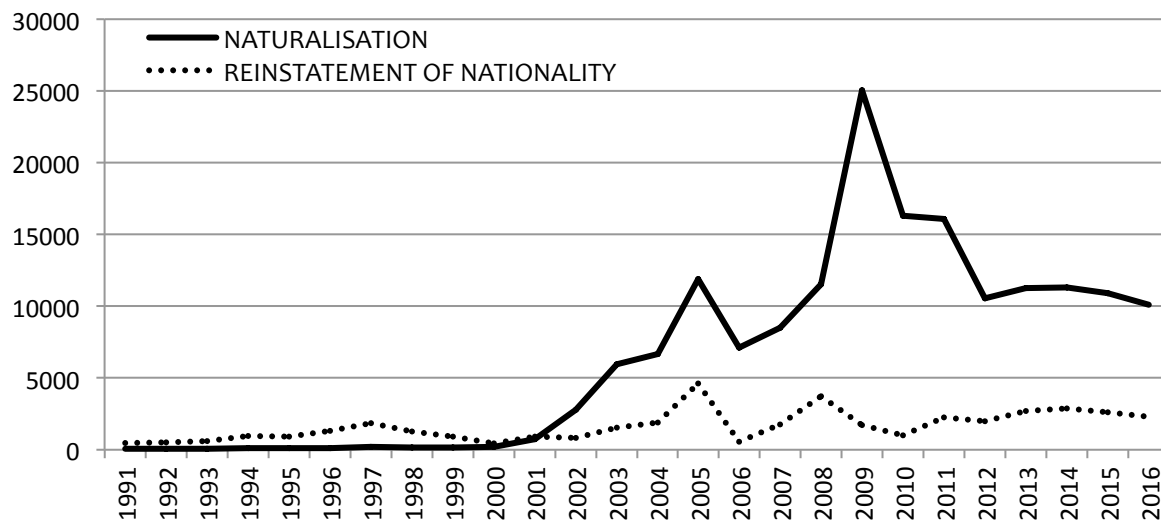
Table 2. Acquisition of citizenship by naturalisation and reinstatement of nationality 1991-2016

YEAR	NATURALISATION	REINSTATEMENT OF NATIONALITY
1991	49	489
1992	82	505
1993	75	608
1994	108	962
1995	91	898
1996	131	1,308
1997	218	1,851
1998	169	1,267
1999	156	920
2000	199	444
2001	719	901
2002	2,807	817
2003	5,973	1,550
2004	6,679	1,894
2005	11,887	4,622
2006	7,100	557
2007	8,479	1,781
2008	11,512	3,740
2009	25,030	1,708
2010	16,299	1,010
2011	16,084	2,264
2012	10,538	1,987
2013	11,270	2,686
2014	11,314	2,886
2015	10,924	2,609
2016	10,108	2,303
TOTAL	168,001	42,567

Sources: Ministry of Justice (2015: 1014; 2016: 34)

The trend is better shown in the following graph.

Figure 1. Trends in naturalisation and reinstatement of nationality 1991-2016



The frequency of naturalisation in the 1990s was very low. The foreign spouses of Korean men did not need naturalisation until early 1998 because they automatically acquired citizenship upon marriage. In that period, ethnic return migration from the former communist countries was restricted. Return migrants from China had greater recourse to reinstatement of nationality than naturalisation because the first-generation Korean Chinese were treated as having once held ROK citizenship. Since 2001, naturalisation cases have increasingly outnumbered cases of reinstatement of nationality.

A great leap in the number of naturalisations in the new millennium was due to an increase of marriage migrations. The sudden increase of naturalisation cases in 2005 is explained by the relaxation of in-marriage requirement for spousal naturalisation by the 2004 amendment of the Nationality Act. In that year, the exclusionary Guidelines on the Nationality Affairs of Coethnics from China were replaced by the less restrictive Guidelines on the Reinstatement of Nationality and Other Affairs for Coethnics of Foreign Nationality, which was reflected in the increase in the numbers of both naturalisation and reinstatement cases (Ministry of Justice 2005: 557).

The fluctuation between 2005 and 2009 was mainly due to administrative-technical reasons. The reorganisation of the Immigration Bureau into the Korea Immigration Service interrupted citizenship administration in 2006 (Ministry of Justice 2006: 444). Another leap in 2009 was due to extra naturalisation tests for expediting the naturalisation procedure (Ministry of Justice 2009: 708). The number of naturalisation cases showed a sudden drop in 2010-2012. Many coethnics of foreign nationality who were eligible for naturalisation chose to settle on permanent residency, as it was made available to return migrants in 2010 (Ministry of Justice 2012: 606; Kim 2016: 1542). Behind the increase of reinstatements of nationality in the current decade is the exemption of actual renunciation of prior citizenship for return migrants of 65 years of age or above effected by the 2010 amendment of the Nationality Act.

Table 3 shows the major source countries of people who acquire ROK citizenship by naturalisation or reinstatement of nationality.

Table 3. Naturalisation and reinstatement of nationality by reference to countries of origin 1991-2015

COUNTRIES OF ORIGIN	NATURALISATION	REINSTATEMENT OF NATIONALITY
TOTAL	157,893	40,264
CHINA (KOREAN CHINESE)	88,543	13,528
CHINA (NON-KOREAN)	25,976	8,876
VIETNAM	24,871	689
PHILIPPINES	7,245	677
TAIWAN	3,024	1,068
CAMBODIA	2,613	47
MONGOLIA	1,381	111
UZBEKISTAN	823	210
JAPAN	427	846
RUSSIA (NON-KOREAN)	646	88
RUSSIA (KOREAN RUSSIAN)	316	52
US	71	10,447
OTHERS	1,957	3,625

Sources: Ministry of Justice (2010-2015)

Over 72 percent of the naturalised citizens are from China and 77 percent of them are ethnic Koreans. Vietnam is the second largest source country, and most of the naturalised persons from Vietnam are spouses of Korean citizens, as Table 4 shows. Only a limited number of US citizens have been naturalised to Korea. On the other hand, many Korean Americans have recovered their ROK citizenship by reinstatement of nationality.

Table 4. Naturalisation by types and countries of origin in 2015

COUNTRIES	TOTAL	ORDINARY	FACILITATED	SPECIAL	CONCURRENT
TOTAL	10,924	323	7,584	2,778	239
CHINA (KOREAN)	4,940	187	2,688	1,993	72
CHINA (NON-KOREAN)	1,537	38	881	504	114
VIETNAM	2,722	6	2,645	68	1
TAIWAN	427	56	275	74	22
CAMBODIA	406	0	405	1	0
PHILIPPINES	280	0	258	20	2
MONGOLIA	101	7	75	14	5
UZBEKISTAN	81	3	64	10	4
NEPAL	70	0	67	3	0
JAPAN	44	0	13	30	1

RUSSIA (NON-KOREAN)	82	2	60	15	5
RUSSIA (KOREAN)	38	1	31	5	1
US	6	2	0	4	0

Source: Ministry of Justice (2015: 1016-1018)

Table 4 indicates that, while facilitated naturalisations account for the largest percentage of naturalisations, special naturalisations make up as large as a quarter of all naturalisations. The largest source country is again China. Most of their naturalisations are by children of persons who acquired ROK citizenship by naturalisation or reinstatement of nationality. Among the facilitated naturalisations are also kinship-based naturalisations – offspring of former citizens.

Table 5 demonstrates the changing percentage of spousal naturalisations among all naturalisations and the major countries of origin for persons who acquire citizenship by spousal naturalisation. While China has always been the biggest source country, naturalisations of Vietnamese spouses have notably increased over the past years.

Table 5. Spousal naturalization frequency and countries of origin 2005-2010

Year	%	Total	China	Vietnam	Cambodia	Philippines	Mongolia	Uzbekistan
2005	59.5	7,075	5,572	344	14	728	75	69
2006	47.0	3,344	2,644	222	22	302	22	36
2007	49.4	4,190	3,109	439	38	314	67	50
2008	68.8	7,916	5,812	1,115	73	550	110	57
2009	68.5	17,141	11,744	3,754	178	809	159	96
2010	63.0	10,271	6,154	2,981	458	436	135	38
2011	66.7	10,733	6,023	3,056	486	488	113	52
2012	73.4	7,733	3,668	2,935	357	327	79	61
2013	80.0	9,021	9,457	3,914	500	513	99	78
2014	71.4	8,082	3,817	2,904	397	360	79	64
2015	63.8	6,966	3,121	2,645	405	258	79	64

Sources: Ministry of Justice (2009; 2010; 2015)

Total: total number of spousal naturalisations; % = percentage of spousal naturalisations among all naturalisations; the figures for Cambodia for 2005-2010 are based on the assumption that all naturalisation cases are spousal naturalization cases.

The following table shows the success and failure rates of applications for naturalisation and reinstatement of nationality since 2001. Until 2006, only a tiny minority of applications were refused. Until 2006, citizenship affairs were under the responsibility of the Office of Legal Affairs and not the immigration service, and until 2005 no citizenship data were included in statistical yearbooks. In addition to technical differences between the Office of Legal Affairs and the KIS with regard to data management, there were differences in the way of handling applications between the two organisations or the two periods of citizenship administration. In the early days, the administration frequently refused to receive applications without full screening when it suspected that some of the requirements were not fulfilled. Even now, applications are often returned to the applicants rather than rejected, when they are

found to have failed to fulfil some of the requirements. Such measures are not included among refusal decisions.

Table 6. Approval and refusal of naturalisation and reinstatement of nationality 2001-2015

YEAR	NATURALISATION			REINSTATEMENT OF NATIONALITY		
	A (approved)	R (refused)	A : R	A (approved)	R (refused)	A : R
2001	719	5	100 : 0.7	901	24	100 : 2.7
2002	2,807	214	100 : 7.6	817	94	100 : 11.5
2003	5,973	148	100 : 2.5	1,550	193	100 : 12.5
2004	6,679	384	100 : 5.7	1,894	103	100 : 5.4
2005	11,887	436	100 : 3.7	4,622	89	100 : 1.9
2006	7,100	368	100 : 5.2	557	91	100 : 16.3
2007	8,479	1,379	100 : 16.3	1,781	121	100 : 6.8
2008	11,512	2,333	100 : 20.3	3,740	689	100 : 18.4
2009	25,030	6,973	100 : 27.9	1,708	287	100 : 16.8
2010	16,299	5,898	100 : 36.9	1,010	70	100 : 6.9
2011	16,084	6,663	100 : 41.4	2,264	86	100 : 3.8
2012	10,538	5,814	100 : 55.2	1,987	31	100 : 1.6
2013	11,270	7,240	100 : 64.2	2,686	114	100 : 4.2
2014	11,314	7,003	100 : 61.9	2,886	112	100 : 3.9
2015	10,924	8,337	100 : 76.3	2,609	83	100 : 3.2
TOTAL	156,615	53,194	100 : 34.0	31,012	2,187	100 : 7.1

Source: Ministry of Justice (2015: 1022)

The frequency of refusal decisions has substantially increased since the KIS took over citizenship administration, but approval decisions still greatly outnumber refusal decisions. If the ROK has a more generous attitude to naturalisation than other countries of immigration, it must be because the great majority of naturalisation applications are for spousal naturalisation and “it is ethnic Korean men who are bringing in migrant wives” unlike in Western countries “where citizens from immigrant backgrounds bring in spouses from their home countries” (Kim 2016: 1548).

5. Loss of citizenship

5.1 Involuntary loss of citizenship

One loses or may lose citizenship against his or her will by voluntarily acquiring foreign citizenship, by failing to renounce the citizenship of origin after acquiring ROK citizenship, by failing to comply with an order to choose citizenship, which is issued in reaction to failure to fulfil the obligation to choose citizenship or to conduct contrary to the pledge not to exercise foreign citizenship, by committing conduct prejudicial to the national interest, or as a result of the nullification of naturalisation or other administrative decisions of conferring citizenship.

Loss of citizenship upon voluntary acquisition of foreign citizenship

Art. 15(1) of the Nationality Act is one of the oldest and most changeless provisions in the Nationality Act: “A national of the Republic of Korea who voluntarily acquires the nationality of a foreign state loses his or her nationality of the Republic of Korea at the time when he or she acquires the said foreign nationality”.¹⁷ The loss of citizenship under this article occurs only when one ‘voluntarily’ acquires foreign citizenship, that is, by naturalisation or recovery of citizenship. The background of the acquisition of foreign citizenship is not considered; for example, economic necessity or societal pressure is no excuse. The Constitutional Court declared it constitutional to take away ROK citizenship by reason of acquisition of foreign citizenship (2014. 6. 26. 2011HeonMa502).

Art. 15(2) provides for certain circumstances in which a citizen does not immediately lose his or her citizenship even though he or she acquires foreign citizenship. Those are

- where a person acquires the citizenship of his or her spouse by marriage (spousal transfer of citizenship)
- where a person is adopted by a foreigner and acquires the citizenship of the adoptive parent
- where a person acquires the citizenship of his or her father or mother by acknowledgment
- where a person who concurrently acquires the citizenship of a foreign state under the laws of that state as a spouse or a child of a person who acquires the citizenship of that foreign state and thereby loses ROK citizenship (spousal and filial extension of acquisition of citizenship).

Such a person may retain his or her ROK citizenship by declaring (reporting) to the Minister of Justice his or her intention to retain his or her citizenship within six months of acquiring the foreign citizenship. The person has the obligation to choose citizenship at some point prescribed by the law (art. 12). If the person fails to make the declaration within six months, the person loses his or her ROK citizenship and the loss occurs retroactively from the time when he or she acquired the foreign citizenship.

¹⁷ In the Nationality Act of 1948, the provision was in art. 12(iv) and phrased in a somewhat different way.

This safeguard was introduced in 1998. However, the acquisition of foreign citizenship by marriage, adoption, acknowledgment or concurrent acquisition to which this safeguard applies is limited to automatic acquisition. Therefore, a person who marries a foreigner and acquires the citizenship of the spouse by naturalisation cannot avoid the simultaneous loss of his or her ROK citizenship. Thus the use of the safeguard is practically limited because marriage and adoption are no longer grounds of automatic acquisition of citizenship in many countries. Yet it is questioned whether a minor child who acquires foreign citizenship by naturalisation should not be given a chance to retain his or her citizenship at least until he or she reaches majority. In practice, children adopted by foreigners are given the chance to retain their citizenship by declaration even when they acquire the citizenship of the adoptive parent by naturalisation instead of by virtue of adoption itself. Nevertheless, the safeguard is hardly used for adopted children because of the ignorance or lack of interest on the part of the adoptive parents.

The retention of citizenship by declaration is not permanent. One who retains ROK citizenship by the declaration of intention to retain citizenship has the obligation to choose citizenship pursuant to the option rules.

Lapse of acquired citizenship due to failure to renounce the citizenship of origin

A person who acquires ROK citizenship by naturalisation or reinstatement of nationality should renounce his or her original citizenship within one year of acquiring ROK citizenship (art. 10(1), Nationality Act). As has been mentioned, for some categories of persons acquiring citizenship, the actual renunciation of the original citizenship can be replaced by a pledge not to exercise the foreign citizenship inside the ROK (art. 10(2)). Those categories are

- a person who acquires citizenship by facilitated naturalisation as the spouse of a citizen
- a person who acquires citizenship by special naturalisation or reinstatement of citizenship by reason of a special contribution to the republic or special talent
- a person who was adopted by a foreigner before reaching majority under the Civil Act, acquired foreign citizenship, has continuously lived abroad, and acquires citizenship by reinstatement of nationality
- a person who permanently returned from a foreign state at the age of 65 years or above and acquires citizenship by reinstatement of nationality
- a person who has difficulty in renouncing his or her citizenship or origin because of reasons consisting in the laws and institutions of that foreign state despite his or her intention to renounce it.

Failure to renounce the prior citizenship or to make a pledge not to exercise the foreign citizenship within one year of acquiring ROK citizenship results in the loss of ROK citizenship upon the passage of the one year (art. 10(3), Nationality Act).

Lapse of citizenship due to failure to comply with the order to choose citizenship issued because of failure to fulfil the obligation to choose citizenship

Multiple citizens have the obligation to choose citizenship. A person who became a multiple citizen before reaching the age of twenty should choose citizenship before reaching the age of

22. A person who became a multiple citizen after reaching the age of twenty should choose citizenship within two years after becoming a multiple citizen (art. 12, Nationality Act). Not all multiple citizens have the obligation to choose citizenship. This article applies only to persons who became multiple citizens at birth and persons who declared the intention to retain citizenship after marriage, adoption, acknowledgment or concurrent acquisition of citizenship. Thanks to the 2010 amendment, such multiple citizens may make a pledge not to exercise foreign citizenship inside the ROK instead of actually choosing citizenship as long as their multiple citizenship is not a product of birth tourism (art. 13). As will be explained later, military service restricts and delays the option of citizenship until the military obligation has been discharged or the person is released from the military obligation for other reasons.

If a person who has the obligation to choose citizenship or alternatively to make a pledge not to exercise foreign citizenship fails to perform that obligation, the Minister of Justice issues an order that the person should choose citizenship within a year. If the person fails to choose citizenship – more accurately, renounce his or her citizenship other than his or her ROK citizenship –, the person loses his or her ROK citizenship with the passage of the one year (art. 14-2(1), Nationality Act).

Lapse of citizenship due to failure to comply with the order to choose citizenship issued in reaction to conduct contrary to the pledge not to exercise foreign citizenship in the ROK

If one who has made a pledge not to exercise foreign citizenship in lieu of actually choosing citizenship (renouncing the citizenship other than his or her ROK citizenship) commits conduct contrary to the pledge, the Minister of Justice may issue an order that the person should choose citizenship within six months. The person loses his or her ROK citizenship with the passage of the six months, if he or she fails to renounce the citizenship other than his or her ROK citizenship (art. 14-2(2)). There are three types of conduct regarded as contrary to the pledge within the meaning of this provision, which are enumerative, not illustrative. Those are

- repetitive use of a foreign passport in entering and departing the country
- alien registration pursuant to the Immigration Control Act or the reporting of the place of residence under the Overseas Koreans Act with the intention of exercising foreign citizenship¹⁸
- exercising foreign citizenship or attempting to exercise foreign citizenship vis-à-vis the state, a local government, a public agency, a public organisation, or an educational institution by using a foreign passport in the ROK without just cause (art. 18-2(4), Enforcement Decree for the Nationality Act).

Loss of citizenship by administrative decision

A person who became a multiple citizen after birth can be deprived of his or her ROK citizenship by a ‘decision of loss of nationality’ by the Minister of Justice. Such decision can be made if the Minister of Justice recognises that it is inappropriate for the person to possess ROK citizenship because he or she has committed an act prejudicial to the national interest of the ROK in respect of national security, diplomatic relations or the national economy, or an

¹⁸ An ‘overseas Korean’ may report his or her place of residence in lieu of alien registration in order to enjoy the benefits given to ‘overseas Koreans’ under the Overseas Koreans Act.

act that substantially impedes the maintenance of social order (art. 14-3, Nationality Act). The types of act regarded as impeding the maintenance of social order are criminal acts upon which the perpetrator has been sentenced to imprisonment of seven years or more (art. 18-3, Enforcement Decree for the Nationality Act). The Enforcement Rules for the Nationality Act gives an enumerative list of crimes against which a decision of loss of nationality can be issued. Those crimes include homicide, rape and other types of sexual violence, larceny, robbery, and drug use (art. 12-3).

The decision of loss of nationality can be made only after a hearing pursuant to the Administrative Procedure Act and deliberation by the Nationality Deliberation Committee. The loss of citizenship takes effect when the Minister of Justice makes the decision.

Loss of citizenship as a result of the nullification of naturalisation, reinstatement of nationality or nationality determination

The Nationality Act allows for the nullification of decisions of naturalisation, reinstatement of nationality or nationality determination on account of deceit or any other illegitimate acts for inducing the decision (art. 21). The Enforcement Decree (art. 27(1)) specifies the grounds for nullification. Those grounds are

- forging or altering a personal identification document or submitting a forged or altered personal identification document for the purpose of inducing a decision of naturalisation, reinstatement of nationality or nationality determination
- criminal conviction for reporting false information about marriage or adoption, by means of which the person acquired ROK citizenship
- a court decision annulling or declaring null and void a legal relationship on the ground of which ROK citizenship was acquired
- a serious defect in the decision of naturalisation, reinstatement of nationality or nationality determination.

Marriage fraud involves the act of reporting false information about marriage and thereby causing the entry of false information on the original deed of a public document or a public electronic record, which is a crime to be punished under art. 228 of the Criminal Act. There are cases in which marriage migrants from China had their naturalisations nullified for marriage fraud and became stateless (Kim & Choi 2013: 24-32; Chung et al. 2010: 20-22). The use of a passport containing false information such as a false name is also a ground for nullifying a naturalisation decision if that decision was made on the basis of the information of the personal identity recognised from the passport (Constitutional Court 2015. 9. 24. 2015HeonBa26).

International norm is more or less generous toward the deprivation of citizenship obtained by misrepresentation or fraud. Both the Convention on the Reduction of Statelessness (art. 8(2)(b)) and the European Convention on Nationality (art. 7) allow such deprivation of citizenship even if it results in statelessness. Korea's problem was that nullification of naturalisation decisions had been made without a statutory ground until 2008. Still, the 2008 amendment did not introduce a statute of limitations on the nullification of the administrative act of conferring citizenship. In a case involving nullification more than ten years after the naturalisation decision, which rendered the person stateless, the Constitutional Court held that the lack of a temporal limit on the nullification of naturalisation was not unconstitutional (Constitutional Court 2015. 9. 24. 2015HeonBa26).

5.2 Voluntary Loss of Citizenship

Until 1998, the renunciation of citizenship had to be ‘approved’ by the Minister of Justice. One had to submit proof of dual citizenship in order to obtain approval. The 1998 amendment removed the term *heoga* (approval, authorisation) from the law, and made the renunciation of citizenship a part of the option of citizenship for dual citizens. Since then, multiple citizens may renounce their ROK citizenship by declaration (reporting of intention), which is one form of performing their obligation to choose citizenship. The shift from approval to declaration may sound as if the renunciation of citizenship became freer. In fact, on the contrary, the law has evolved toward strengthening restrictions on renunciation.

The 1998 amendment introduced a restriction on renunciation of citizenship contingent on the military obligation. One who reached the age for enlistment was disallowed to renounce his ROK citizenship until he fulfilled his military obligation or was released from the obligation. Since a male citizen became subject to enlistment on the first day of the year in which he turned eighteen years of age, a multiple citizen could renounce his ROK citizenship before that day and within two years from completing his military service or release from the obligation. The introduction of this restriction, however, could not prevent many ROK-US dual citizens from renouncing their ROK citizenship in their low teens or even at younger ages. In reaction, a powerful restriction was introduced in 2005. The restriction was against the renunciation of citizenship by male multiple citizens born abroad to parents who had no intention of permanent residence abroad. Such persons could not renounce their ROK citizenship until they discharged their military obligation or were released from it. A few more restrictive provisions were added by the 2010 amendment. The current rules can be specified as follows.

First, mono-nationals cannot renounce their ROK citizenship.

Second, multiple citizens may renounce their ROK citizenship only in fulfilment of their obligation to choose citizenship within a designated period.

Third, the renunciation of citizenship is conducted by way of a declaration (reporting) of intention to renounce citizenship to the Minister of Justice. One may declare his or her intention of renunciation only when he or she is domiciled in a foreign state and communicate the declaration only through the head of the diplomatic mission that has jurisdiction over that place. In other words, only persons who reside abroad may renounce their citizenship. Multiple citizens residing in the ROK cannot choose foreign citizenship by renouncing their ROK citizenship.

Fourth, male multiple citizens born abroad to parents who had no intention of permanent residence abroad when he was born cannot renounce their ROK citizenship before they have discharged the obligation of active military service or obtain release from the obligation (art. 12(3), Nationality Act). What are the criteria distinguishing between a person born abroad to parents who had the intention of permanent residence abroad and a person whose parents had no such intention? The Enforcement Decree (art. 16-2) and Enforcement Rules (art. 10-2(1)) define a person born abroad to parents who had the intention of permanent residence abroad as

- a person born abroad whose father or mother had established a base of living in a foreign state and had acquired foreign citizenship or permanent residency before he was born (for countries that do not grant permanent residency, the maximum-term visa or residence permit is regarded as equal to permanent residency);

- a person whose father or mother acquired foreign citizenship or permanent residency after he was born abroad;
- a person whose father or mother had resided abroad and had applied for citizenship or permanent residency by the time when he was born;
- a person born abroad whose father or mother applied for foreign citizenship or permanent residency after he was born; or
- a person born abroad whose father or mother had resided abroad for seventeen consecutive years or more.

Fifth, male multiple citizens born abroad to parents who had the intention of permanent residence abroad may renounce their ROK citizenship by declaration before 31 March of the year of enlistment (the year in which they reach the age of eighteen) or after they have discharged their military obligation or get released from the obligation. The bar to renunciation after reaching a certain age applies even to second- or third-generation emigrants who have very weak ties with the ROK. This provision is more restrictive than is allowed by the European Convention on Nationality, whose art. 8 prohibits states parties from “deny[ing] the renunciation of nationality merely because persons habitually resident in another State still have military obligations in the country of origin”.¹⁹ Yet the Constitutional Court of the ROK held that the restriction is constitutional *inter alia* because renunciation is possible before reaching the age for enlistment (2015. 11. 26. 2013HeonMa805 & 2014HeonMa788 consolidated).

Sixth, there is no restriction on the renunciation of citizenship by minors except for the above restrictions. Whether it is appropriate to allow a child to relinquish his or her citizenship by the decision of his or her parents has been debated, but little effort has been made to restrict it.

Seventh, the loss of citizenship takes effect when the Minister of Justice accepts the declaration of renunciation.

Because of the above restrictions, the window for renouncing ROK citizenship is very limited. By allowing renunciation only to multiple citizens domiciled abroad, the law takes away the freedom of ‘choice’ from multiple citizens who have to fulfil their obligation to ‘choose’ citizenship while residing in the country. They have no choice but to renounce their other citizenship or pledge not to exercise it and keep possessing their ROK citizenship. By making renunciation possible only in the context of the option of citizenship, the law makes one who has already practised the option by pledging not to exercise foreign citizenship in the ROK unable to renounce his or her ROK citizenship even if he or she permanently resides abroad. Although the ROK is not a state party, the European Convention on Nationality provides a standard for evaluating this restrictive attitude. According to art. 8 of the Convention, “each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless”. By stipulating that “a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad”, the Convention prohibits restrictions on renunciation of citizenship by citizens who are habitually resident abroad.

¹⁹ European Convention on Nationality Explanatory Report, para. 81.

5.3 Procedures and duties after the loss of citizenship

Except when one has lost citizenship by renunciation, a person who has lost his or her ROK citizenship should report the loss of citizenship to the Minister of Justice (art. 16(1), Nationality Act). While there is no penalty against noncompliance with this rule, one can be penalised under the Immigration Control Act by continuing to use an invalid passport or misrepresenting his or her citizenship status when entering the country. The reporting obligation is designed to better obtain information of emigrants who acquire foreign citizenship and thereby lose ROK citizenship. Yet many emigrants do not comply with the obligation after naturalisation to foreign countries and leave the ROK government unaware about their citizenship status.

When a public official finds that a person has lost his or her ROK citizenship, he or she should immediately report it to the Minister of Justice so that the change of status can be reflected in administration and public records. The loss of citizenship of a person who acquires foreign citizenship takes effect at the time when he or she acquires that foreign citizenship. If that date is unknown, the date of the first issuance of that person's foreign passport is presumed to be the date when the person lost his or her ROK citizenship (arts. 15(3) & 16, Nationality Act).

One who has lost his or her ROK citizenship should transfer any economic right which only citizens can enjoy within three years unless otherwise provided (art. 18, Nationality Act). Since the late 1990s, foreigners may enjoy real property rights without many restrictions. If the person has a real property right, he or she should report the loss of citizenship within six months (art. 8(3), Report of Real Estate Transactions Act).

5.4 Statistical overview of the loss of citizenship

The following table shows the numbers of people who lost their citizenship involuntarily and voluntarily (renunciation). The figures for involuntary loss include cases of lapse (due to failure to renounce foreign citizenship after acquiring ROK citizenship, non-performance of the obligation to choose citizenship or, after 2010, failure to make a pledge not to exercise foreign citizenship in the ROK as an alternative to the renunciation of foreign citizenship), cases of automatic loss resulting from the acquisition of foreign citizenship, and cases of loss as a result of the nullification of the naturalisation decision or decision on reinstatement of nationality.

Table 7. Loss of citizenship 1991-2016

YEAR	INVOLUNTARY LOSS	RENUNCIATION
1991	12,348	51
1992	8,831	49
1993	14,305	59
1994	5,857	40
1995	811	41
1996	400	66

1997	1,263	84
1998	2,364	191
1999	5,904	285
2000	16,168	586
2001	10,589	651
2002	14,508	708
2003	29,597	802
2004	22,070	1,419
2005	21,996	2,921
2006	20,465	683
2007	22,802	726
2008	20,163	276
2009	21,136	886
2010	22,131	733
2011	21,472	1,324
2012	17,641	823
2013	19,413	677
2014	18,150	1,322
2015	16,595	934
2016	35,257	1,147

Sources: Ministry of Justice (2015: 1014-1015; 2016: 35)

The United States tops among the countries whose citizenship the persons who lost their ROK citizenship intended to retain or acquire, which means that the acquisition of US citizenship is the greatest cause of loss of ROK citizenship. The sudden increase in the number of involuntary losses in 2016 is due to naturalisations to Japan (Ministry of Justice 2016: 35).

6. Controlling multiple citizenship and statelessness

6.1 Controlling multiple citizenship

Until 1998, Korean citizenship law was characterised by a hostile attitude to multiple citizenship but insufficient control of it. The Nationality Act did not provide for the option of citizenship, while multiple citizens by birth were advised to choose citizenship in an *ad hoc* manner according to the justice ministry's internal guidelines. The 1997 amendment introduced very restrictive rules against multiple citizenship. The option of citizenship was strictly enforced, with non-performance of the obligation to choose citizenship resulting in the lapse of citizenship. Policy commentators often criticized the taking away of citizenship

without notice simply because the obligation to choose citizenship was not fulfilled. That kind of criticism and arguments in favour of tolerance to multiple citizenship in an era of globalisation fuelled the legislative change in 2010. Now the majority of multiple citizens by birth may permanently retain their multiple citizenship. Many people who acquire ROK citizenship after birth may also remain multiple citizens if the laws of their state of prior citizenship allow. The current law controls and tolerates multiple citizenship in the following ways.

Option of citizenship

The ROK law imposes on multiple citizens the obligation to choose citizenship. As mentioned, not all multiple citizens have that obligation. It is only for multiple citizens by birth and persons who declared the intention to retain citizenship after marriage, adoption, acknowledgment or concurrent acquisition of citizenship. Since the latter type of multiple citizens are negligible in number, the option of citizenship is practically for multiple citizens by birth. The standard deadline for choosing citizenship is the time when the person reaches the age of 22, but the military obligation restricts the renunciation of ROK citizenship and hence the choice of foreign citizenship. To reiterate, persons born abroad to parents who had no intention of permanent residence abroad may choose foreign citizenship by renouncing their ROK citizenship only after they get released from the military obligation (by discharging the active duty or by other means), while persons born abroad to parents who had the intention of permanent residence abroad may renounce their ROK citizenship before 31 March of the year in which they reach the age of eighteen or after release from the military obligation. On the other hand, one may choose ROK citizenship by renouncing his or her other citizenship at any time before the possible lapse of their ROK citizenship due to the non-performance of the obligation to choose citizenship.

One of the most remarkable changes brought by the 2010 amendment was the introduction of a pledge not to exercise foreign citizenship inside the ROK as an alternative to the actual renunciation of the foreign citizenship. Yet not all multiple citizens by birth can enjoy this alternative and permanently remain multiple citizens. It is not available to persons born abroad from birth tourism. A person born in a foreign state while his or her mother, who had left the ROK in pregnancy, was sojourning in that state for the purpose of earning the person the citizenship of that state cannot avail himself or herself of the alternative (art. 13(3), Nationality Act).²⁰ A person who made the pledge may permanently possess his or her foreign citizenship without losing ROK citizenship unless he or she commits an act that is contrary to the pledge.

Another change brought by the 2010 amendment was that a person who failed to choose citizenship, that is, failed to renounce his or her other citizenship (foreign citizenship) or make a pledge not to exercise foreign citizenship would not lose his or her ROK

²⁰ The following person is not regarded as a person born from birth tourism.

- A person whose father or mother lived abroad continuously for two years or more, during which the person was born;
- A person whose father or mother acquired the citizenship, permanent residency or the maximum-term visa / residence permit of a foreign state before or after the birth of that person and had no habitual residence in the ROK in that period; or
- A person whose father or mother was living in a foreign state for a certain period when the person was born for the purpose of study, discharging a public responsibility, performing an overseas assignment, employment, etc. (art. 17(3), Enforcement Decree for the Nationality Act).

citizenship right away. The failure invites an order to choose citizenship, which gives the person a chance to retain his or her ROK citizenship by renouncing his or her other citizenship within a year.

Although many of the provisions are phrased as if those provisions are concerned only with cases of multiple citizenship between the ROK and a *ius soli* country, multiple citizens between the ROK and a *ius sanguinis* country are treated in the same way.

Retention of foreign citizenship after acquiring ROK citizenship

As explained more or less in detail, certain categories of persons who acquire ROK citizenship by naturalisation or reinstatement of nationality are practically exempt from the obligation to renounce their other citizenship, as they can now make a pledge not to exercise foreign citizenship inside the ROK in lieu of actually renouncing the foreign citizenship. To repeat, those categories are

- a person who acquires citizenship by facilitated naturalisation as the spouse of a citizen
- a person who acquires citizenship by special naturalisation or reinstatement of nationality by reason of a special contribution to the republic or special talent
- a person who was adopted by a foreigner before reaching majority under the Civil Act, acquired foreign citizenship, has continuously lived abroad, and recovers ROK citizenship by reinstatement of nationality
- a person who permanently returned from a foreign state at the age of 65 years or above and acquires citizenship by reinstatement of nationality
- a person who has difficulty in renouncing his or her other citizenship because of reasons consisting in the laws and institutions of that foreign state despite his or her intention to renounce it.

During the debate leading to the 2010 amendment, the proposal that permanent residents should be allowed to retain their original citizenship when they acquire ROK citizenship by naturalisation. The idea came up in consideration of the smaller than 20,000 Chinese population (*huaqiao* or *hwagyo*) that had immigrated generations before. The majority of the population possess Taiwanese nationality. Policy commentators observed that many of the ethnic Chinese immigrants adhered to their Taiwanese nationality because of their loyalty to the country which supported them during difficult times and their wish to maintain a sense of identity. It was argued that the toleration of their multiple citizenship would help them to integrate into Korean society while preserving their identity. The idea was incorporated into a draft act internal to the Ministry of Justice, but was abandoned at the last stage of drafting the bill.

6.2 Controlling statelessness

ROK citizenship law has the following rules for preventing statelessness.

- A citizen cannot renounce his or her citizenship if he or she would become stateless.
- No decision of loss of citizenship can be issued against a citizen who has no other

citizenship.

- A person who acquires citizenship by naturalisation or reinstatement of nationality needs not renounce his or her prior citizenship before he or she acquires ROK citizenship.

On the other hand, the law has the following gaps and limitations in preventing statelessness.

- A person can acquire ROK citizenship *iure soli* only if his or her parents are unknown or stateless and, therefore, becomes stateless if he or she fails to acquire *iure sanguinis* the citizenship of the state whose citizenship his or her father or mother holds.
- A person can lose his or her ROK citizenship acquired through naturalisation or reinstatement of nationality or ascertained through nationality determination, if he or she is found to have obtained the ROK citizenship by deceit or other illegitimate means, regardless of whether he or she possesses the citizenship of another state.

As pointed out, there are cases of stateless women who lost their ROK citizenship because their marriages were found to be fake and their naturalisations were nullified. Another group of stateless persons in the ROK are persons alleging to be from North Korea but refused protection under the Act on the Protection and Settlement Support of Residents Escaping from North Korea or denied recognition as ROK citizens through nationality determination. Many of them simply cannot prove that they are from North Korea. Among them are persons whom the ROK government regards as having Chinese citizenship, either as ethnic Koreans in China (*chaoxianzu* or *joseonjok*) or as Chinese residents in North Korea (*huaqiao* or *hwagyo*), but whom the Chinese government does not recognise as Chinese citizens (Chung et al. 2010: 22-27; Kim & Choi 2013: 41-47). These are persons of ‘undetermined nationality’ in the UNHCR lexicon (Massey 2010). There are also a few who are recognised as citizens of North Korea but do not qualify as citizens of the ROK under the Nationality Act. An example is a person who obtained North Korean citizenship *iure sanguinis a matre* at a time when the ROK only recognised *ius sanguinis a patre* (e.g. the complainant in Constitutional Court 2000. 8. 31. 97HeonGa12). That person may be *de facto* stateless, because he is a citizen of the DPRK, but is unwilling to avail himself of the protection of the DPRK. But it is meaningless to distinguish between *de iure* and *de facto* statelessness in this case, because, from the ROK point of view, the DPRK is not a state and its citizenship is not valid. There are also a few stateless persons from other parts of the world, while *de facto* statelessness arising from the insufficiency of birth registrations among children born to asylum seekers and undocumented migrants is outside of the scope of this report.

Although the ROK is a state party to the 1954 Convention on the Status of Stateless Persons, few legislative efforts have been made to bring the convention rules and standards into law and practice. Neither does the government seriously consider accession to the Convention on the Reduction of Statelessness (Chung et al. 2010; Choi 2010).

7. Agendas for future reform

7.1 Citizenship policies 1998-2016

The ROK has gone through four presidencies since the big revision of the citizenship law in 1997 – Kim Dae-jung (1998-2003), Roh Moo-hyun (2003-2008), Lee Myung-bak (2008-2013), and Park Geun-hye (2013-present). The colours of the four administrations have differed and the challenges they have faced have shaped their policies in different ways.

The Kim Dae-jung administration did not try to make many changes to the Nationality Act, which had been substantially revised during the Kim Young-sam presidency. The biggest challenge to the citizenship policy of the Kim Dae-jung government came from relations with the ethnic diaspora in China, whereas the direction of nationality administration had already been laid down by way of Guidelines on the Nationality Affairs of Coethnics from China the year before its inauguration. The Kim Dae-jung administration focused more on developing a special non-citizen ethnonational membership status (ethnizenship in Bauböck's terminology, Bauböck 2007; Lee 2013b) than using citizenship law as a policy tool for managing relations with coethnics. The strengthened forces of globalisation in the wake of the Asian Financial Crisis put pressure on immigration law, but the pressure was hardly translated into citizenship law.

The Roh Moo-hyun presidency was characterised by heightened concern with human rights. The multicultural family policy, a term for a policy of supporting marriage migrants and their families, entailed changes to the citizenship law – e.g. the widening of facilitated naturalisation for marriage migrants. The Roh administration inherited many agendas from the Kim Dae-jung government and completed some of the changes that had started, such as the amendment of the Overseas Koreans Act and the implementation of another form of ethnizenship by way of the Working Visit scheme for coethnics from China and the former Soviet Union (Lee 2012). It also institutionalised permanent residency, precipitated by campaigns to promote the rights of Chinese residents (*huaqiao*). While the forces of globalisation coupled with human-rights concern put pressure for a further liberalisation of citizenship law, many agendas remained at the policy discourse level, such as the toleration of multiple citizenship. In the meantime, the conservative lawmaker Hong Joon Pyo initiated an amendment for restricting the renunciation of citizenship in the name of blocking the evasion of military service. As has been seen, the 2005 amendment forms a significant part of the option rules in the current law.

Lee Myung-bak, the first conservative president in ten years, came up with a citizenship policy closely related with his economy-first idea and national competitiveness policy. The remarkable change to the Nationality Act in 2010 derived from the preoccupation with promoting competitiveness, while many elements adopted in that amendment had been on the agenda of policy discourse under the Roh Moo-hyun presidency. The change in the citizenship law did not amount to an introduction of *ius pecuniae* or investor citizenship (Dzankic 2012), but permanent residency was used as a blatant lure for investments, while the citizenship law also went as far as introducing a special talent privilege in naturalisation.

The Park Geun-hye presidency shows the least interest in citizenship and immigration policy among the four. Its citizenship and immigration policy has been substantially coloured with its concern with national security and social order. Accordingly, many restrictive rules and standards have been introduced through delegated legislation,

administrative rules and guidelines, such as the doubling of the threshold for livelihood in ordinary naturalisation. The government has been campaigning for a strengthened national identity of naturalised citizens. It is also planning to restructure the visa and status of stay system with a view to limiting naturalisation application to a certain limited statuses of stay or even to permanent residency only.

7.2 Agendas for future reform

The following agendas have come up through the policy discourses of the past twenty years and await further development and legislative efforts.

Introduction of ius soli

During the Roh Moo-hyun presidency, the Ministry of Justice discussed a number of issues in anticipation of a reform of citizenship law and policy. Among them were the toleration of multiple citizenship and the introduction of a modified form of ius soli. Double ius soli and acquisition iure soli conditional on visa types were discussed, while ius soli after birth was not recommended. While multiple citizenship made its way into the law, the ius soli idea disappeared from reform discourse. Yet further discussion is needed for reaching a conclusion for a middle range policy. At least the widening of the exceptional ius soli in the current law should be considered.

Residence status as a prerequisite for naturalisation

It is an established case law principle that no particular visa type is precluded when judging whether the minimum domicile period requirement has been fulfilled. But the courts simultaneously take the position that which visa the applicant has can be considered as a determining factor in deciding whether to approve naturalisation. This practically allows the administration to exclude the holders of certain visas and statuses of stay. Nevertheless, immigration officials fear that guestworkers and the holders of other limited-term visas might fulfil the minimum domicile period requirement by various means and obtain citizenship by naturalisation. This fear is a partial reason for the Ministry of Justice to plan to make permanent residency a prerequisite for applying for ordinary and facilitated naturalisation. One argument in favour of this plan points to the fact that the same duration of residence (five years) is required for ordinary naturalisation and for some of the standard routes to permanent residency. The counterargument contends that the same residence requirement for citizenship and permanent residency, and a choice between the two, is not an anomaly and even normal in Europe after the adoption of the Long-Term Resident Directive (2003/109/EC). Critics also point out that by making permanent residency a prerequisite for naturalisation the law would make naturalisation take a longer time, while five years is sufficient for acquiring necessary links and knowledge for becoming a member of that state (Lee 2014: 441-442; see Bauböck & Perchinig 2006: 448). An alternative would be to reclassify all visas and statuses of stay into the immigrant or residence type and non-immigrant or non-resident type and open the gate of naturalisation only to the former.

Limiting discretion in decisions on naturalisation / reinstatement of nationality

The administrative decision of approving naturalisation in the ROK is discretionary. There is no naturalisation as of right. This may not be unique compared with many European countries (Waldrauch 2006: 134-159). Courts exercise examination of whether there was ‘deviation and abuse in discretion’ and annul arbitrary decisions. One standard is “whether there is a special reason not to accept the applicant as a member of the citizenry”, which is a tautological criterion that should be applied in a nuanced manner in each case (Seoul Administrative Court 2013. 10. 24. 2012GuHap33317). While a case-by-case approach is inevitable in reasonableness scrutiny, conflicting decisions are often made by different benches in the same court (e.g. Seoul High Court). Alignment in the making of case law is an agenda for future reform.

Greater tolerance to multiple citizenship

Whereas the 2010 amendment successfully opened up the way for toleration of multiple citizenship, there are campaigns for widening the scope of allowing multiple citizenship. It is likely that the age threshold for return migrants to acquire citizenship by reinstatement of nationality without renouncing the prior citizenship will be lowered. On the other hand, the automatic loss of citizenship upon the acquisition of foreign citizenship is likely to go unchallenged a little longer in spite of strong campaigns by emigrants in the United States.

Release from citizenship

While the restraint on the renunciation of citizenship by non-resident citizens from the age for enlistment until release from the military obligation has been declared constitutional, the restraint on release from citizenship for all multiple citizens, whether resident or non-resident, except when exercising the option of citizenship has not been challenged in court. This restraint on the freedom of release from citizenship for non-resident citizens should be examined in light of constitutional law and international human rights norm.

Limits on the nullification of naturalisation

As mentioned, there is no temporal limit on the administrative decision to nullify naturalisation on account of deceit or other illegitimate acts. A reasonable statute of limitations is needed. It will contribute to reducing statelessness.

Reduction and management of statelessness

An advisory research report for the Ministry of Justice in 2010 called for accession to the Convention on the Reduction of Statelessness, one effect of which will be a mandatory expansion of *ius soli* to the extent of granting ROK citizenship to all persons born in the ROK who would otherwise be stateless. The same research suggested that the ROK comply with the standards provided for by the Convention Relating to the Status of Stateless Persons by legislative means. The report also called for the establishment of a procedure for identification and recognition of stateless persons, which it recommended to form a part of asylum administration (Chung et al. 2010).

Reform of the nationality determination procedure

The above report recommended that nationality determination should be calibrated. The current ‘non-possession’ decision should be broken down into i) rejection on account of the possession of foreign citizenship, ii) declaration of inability to identify nationality, and iii) recognition of statelessness.

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