

Case on Excluding Recognized Refugees from Eligibility for Emergency Disaster Relief Payments

[2020Hun-Ma1079, March 28, 2024]

* First Draft

Complainant

D.M.M.A.S. (Foreign National)

Represented by Attorney Lee Il

Decided

March 28, 2024

Holding

The criterion relating to a “household composed solely of foreign nationals” in Section I, “Criteria Regarding Household Composition,” Subsection 2, “Detailed Standards for Household Composition,” of the “Emergency Disaster Relief Payment: Criteria for Household Composition and Objection Processing (2nd),” issued jointly by the relevant ministries on May 13, 2020, violates the Constitution.

Reasoning

I. Overview of Case

Complainant is an Egyptian national who was granted refugee status on March 21, 2018 under Article 18, Section (1) of the Refugee Act. Complainant registered as a foreigner on June 16, 2016 and his residence status is “Residence (F-2).” His spouse and daughter are also registered foreigners.

On May 13, 2020, Complainant applied for an emergency disaster relief payment at a local

community center near his residence but was informed by an employee that, according to internal guidelines, he was not eligible to receive the payment. On June 18, 2020, Complainant submitted an emergency disaster relief payment application at the Seowon Town Community Center in Gwanak District, Seoul. However, an employee at the community center informed him that foreign nationals were eligible to receive the payments only if they were permanent residents or marriage-based immigrants, and since Complainant was a recognized refugee, he did not qualify. The application was subsequently rejected.

On August 11, 2020, Complainant filed the instant constitutional complaint. In this complaint, he argued that limiting eligibility for emergency disaster relief payments to households consisting solely of foreigners who are either permanent residents or marriage-based immigrants, while excluding other foreigners, infringes his rights as a recognized refugee to equality and a humane life. His complaint primarily challenged the Ministry of the Interior and Safety’s “Detailed Implementation Plan (Draft) for Emergency Disaster Relief Payments,” and secondarily challenged the “Criteria for Household Composition and Objection Processing (2nd),” issued jointly by the relevant ministries.

II. Subject Matter of Review

Complainant primarily challenges the Ministry of the Interior and Safety’s “Detailed Implementation Plan (Draft) for Emergency Disaster Relief Payments.” However, since the plan does not include provisions regarding the eligibility criterion for foreign nationals, which Complainant is disputing, the subject matter of review in this case is limited to determining whether the subject of Complainant’s secondary challenge—specifically, the criterion relating to a “household composed solely of foreign nationals” in Section I, “Criteria Regarding Household Composition,” Subsection 2, “Detailed Standards for Household Composition,” of the “Emergency Disaster Relief Payment: Criteria for Household Composition and Objection Processing (2nd),” issued jointly by the relevant ministries on May 13, 2020 (hereinafter referred to as the “Processing Criterion”)—infringes Complainant’s fundamental rights. The Processing Criterion and related provisions are as follows.

A. Processing Criterion

“Emergency Disaster Relief Payment: Criteria for Household Composition and Objection Processing (2nd)” issued jointly by the relevant ministries

I. Criteria Regarding Household Composition

2. Detailed Standards for Household Composition

Overseas Koreans and Foreigner: If a foreigner listed on the resident registration table for a household that includes at least one overseas Korean or national of the Republic of Korea is enrolled in the same (postpaid) health insurance as nationals of the Republic of Korea, either as a subscriber or dependent, or in the same medical aid program as nationals of the Republic of Korea, he or she is eligible for the relief payment.

However, even if a household is composed solely of foreigners, permanent residents (F5) or marriage-based immigrants (F6) are eligible for the relief payment if they are enrolled in the same (postpaid) health insurance as nationals of the Republic of Korea, either as a subscriber or dependent, or in the same medical aid program as nationals of the Republic of Korea. *

** Example: A permanent resident or marriage-based immigrant receiving basic living security who resides in a shelter due to domestic violence, etc.*

B. Related Provisions

Refugee Act (enacted by Act No. 11298 on February 10, 2012)

Article 1 (Purpose)

The purpose of this Act is to prescribe matters concerning the status, treatment, etc. of refugees in accordance with the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") and the 1967 Protocol Relating to the Status of Refugees (hereinafter referred to as the "Refugee Protocol").

Article 30 (Treatment of Recognized Refugees)

(1) Notwithstanding other Acts, a recognized refugee residing in the Republic of Korea shall be treated in accordance with the Refugee Convention.

(2) The State and local governments shall formulate and implement policies, adjust relevant statutes, support relevant ministries and offices, and take necessary measures for the treatment of refugees.

Article 31 (Social Security)

Notwithstanding Article 8 of the Framework Act on Social Security, etc., a foreigner staying in the Republic of Korea after becoming a recognized refugee shall be covered by social security at the same level as that of the citizens of the Republic of Korea.

Article 32 (Basic Living Security)

Notwithstanding Article 5-2 of the National Basic Living Security Act, a foreigner staying in the Republic of Korea after becoming a recognized refugee shall, upon his or her request, receive the protection prescribed in Articles 7 through 15 of the same Act.

Article 38 (Exclusion from Application of Reciprocity for Recognized Refugees)

Notwithstanding other Acts, reciprocity shall not apply to recognized refugees.

Framework Act on Treatment of Foreigners Residing in the Republic of Korea (enacted by Act No. 8442 on May 17, 2007)

Article 1 (Purpose)

The purpose of this Act is to prescribe basic matters relating to the treatment and others of foreigners residing in the Republic of Korea to help them adjust to Korean society to make full use of their abilities and to create a social environment in which Korean nationals and foreigners residing in the Republic of Korea understand and respect one another, thereby contributing to the development and social integration of the Republic of Korea.

Article 2 (Definitions)

The terms used in this Act are defined as follows:

1. The term "foreigners residing in the Republic of Korea" means those who do not possess the nationality of the Republic of Korea but legally stay in the country for the purpose of residence;

2. The term "treatment of foreigners residing in the Republic of Korea" means the treatment of foreigners residing in the Republic of Korea by the State and local governments according to their legal status;

3. The term "marriage-based immigrants" means any foreigner residing in the Republic of Korea who had or has a marital relationship with a national of the Republic of Korea.

Article 12 (Treatment of Marriage-Based Immigrants and Their Children)

(1) The State and local governments may assist marriage-based immigrants and their children in quickly adapting to the society of the Republic of Korea by providing them with education on Korean language, education on the Republic of Korea's institutions and culture, support for child care and education, medical services, etc.

Article 13 (Treatment of Persons with Permanent Residency)

(1) The State and local governments may guarantee foreigners who have the legal status to permanently reside in the Republic of Korea (hereinafter referred to as "permanent residents") the entry, stay, economic activities, etc. in Korea to the extent that security, social order, public welfare and other interests of the Republic of Korea are not undermined.

(2) The provision of Article 12, Section (1) shall apply *mutatis mutandis* to permanent residents.

Article 14 (Treatment of Refugees)

(1) If a refugee recognized under the Refugee Act wishes to reside in the Republic of Korea, the State may provide necessary support to such refugee by applying *mutatis mutandis* Article 12, Section (1).

III. Complainant's Argument

The economic impact caused by the global spread of "coronavirus disease 2019" affects not only our citizens but also foreign nationals residing in South Korea. However, the Processing Criterion, by including only permanent residents and marriage-based immigrants among foreign

nationals as eligible for the emergency disaster relief payment, infringes the recognized refugee Complainant's rights to equality and to a humane life.

IV. Assessment of Justiciability

A. Foreigners as Holders of Fundamental Rights

Either "citizens" or "foreign nationals" with a status similar to that of citizens may be holders of fundamental rights. Human dignity and worth and the right to the pursuit of happiness are generally recognized as human rights, and foreign nationals may also possess these rights. Likewise, the right to equality is a human right, subject only to limitations inherent to the nature of certain rights, such as the right to participate in political affairs, or limitations based on the principle of reciprocity (*see* Constitutional Court 93Hun-Ma120, December 29, 1994; Constitutional Court 99Hun-Ma494, November 29, 2001).

The Processing Criterion includes permanent residents and marriage-based immigrants among foreign nationals as eligible for the emergency disaster relief payment, while excluding recognized refugees. The issue, therefore, is whether this differential treatment among foreign nationals infringes the right to equality. Limitations inherent to the nature of the fundamental right or issues of reciprocity are not relevant in this context. Accordingly, Complainant can be recognized as a holder of fundamental rights in this case (*see* Constitutional Court 2011Hun-Ma474, April 24, 2014).

B. Exercise of Governmental Power

The Processing Criterion is an administrative rule. Generally, administrative rules are effective only within the administrative organization itself. However, if an administrative rule grants authority to an administrative agency under a statutory provision to supplement specific legal content or if a rule, serving as a standard for discretionary actions, is repeatedly applied and becomes established administrative practice, the administrative agency may become self-bound by the rule in its dealings with other parties under the principle of equality or legitimate expectations. In such cases, the rule acquires external binding force and may be subject to a constitutional complaint (*see* Constitutional Court 99Hun-Ma413, May 31, 2001).

It is reasonable to view the Processing Criterion as an administrative rule in the nature of a

guideline for the exercise of discretion. It sets a standard for determining the eligibility of foreign nationals for the emergency disaster relief payment. Local governments, which are the primary entities governed by the Processing Criterion, are effectively required to handle the disbursement of these payments in accordance with the established standards. In this case, the Seowon Town Community Center in Gwanak District, Seoul, denied Complainant the relief payment on the grounds that he did not fall under the category of permanent residents or marriage-based immigrants, as defined in the Processing Criterion.

Thus, the Processing Criterion constitutes an “exercise of governmental power” with external binding force and is subject to a constitutional complaint.

C. Justiciable Interest

Since the disbursement of emergency disaster relief payments has concluded, one could argue that granting relief to Complainant is no longer possible, extinguishing any subjective interest in protecting Complainant's rights, regardless of whether the Processing Criterion is unconstitutional.

However, there remains the possibility that similar types of aid may be offered in the future, either due to a resurgence of coronavirus disease 2019 or other disasters. In such cases, criteria identical or similar to the Processing Criterion may be applied, potentially excluding recognized refugees like Complainant from eligibility if they belong to households composed entirely of foreign nationals.

This case raises the need for constitutional clarification regarding the alleged violation of the right to equality. Since the Court has not yet addressed this issue, there remains a justiciable interest in the present constitutional complaint.

V. Overview

A. Background and Process of Emergency Disaster Relief Payment Distribution

In 2020, the government implemented a cash support measure to assist citizens who suffered economic damage due to, *inter alia*, a decline in consumer confidence resulting from the spread of coronavirus disease 2019 (hereinafter referred to as “COVID-19”). Initially, the government

announced that four-person households in the bottom 70% income bracket, for example, would receive an emergency disaster relief payment of 1 million won. However, following, *inter alia*, consultations between the ruling party and the government, it decided to extend the relief to all citizens. On April 29, 2020, the National Assembly passed the second supplementary budget bill to fund the emergency disaster relief, and from May 2020, payments were distributed to all citizens in the form of prepaid cards, credit card points, or local gift vouchers, concluding on August 31 of the same year.

Complainant was excluded from those subject to the distribution of the emergency disaster relief payments that were provided to all citizens in May 2020. Subsequently, the government conducted selective distributions of emergency relief funds to specific groups, such as small business owners and households in crisis. The May 2020 relief fund distribution to all citizens is commonly referred to as the “1st Emergency Disaster Relief Payment,” and later distributions to selected groups are labeled the 2nd, 3rd, and so forth. However, for clarity in this case, the 1st Emergency Disaster Relief Payment, which is relevant to Complainant, will be referred to simply as the “Emergency Disaster Relief Payment” without specifying the round.

B. Status of Recognized Refugees

1. A person who flees his or her home country to a third country due to political persecution is generally referred to as a "refugee." Because such individuals may face the risk of persecution or threats to their life if they return to their home country, the international community is obligated to protect them.

In 1992, our country ratified the “1951 Convention Relating to the Status of Refugees” and the “1967 Protocol Relating to the Status of Refugees.” In February 2012, the country enacted the Refugee Act, which has been in effect since July 2013.

2. Under the Refugee Act, a "refugee" is defined as a foreigner who is unable or does not desire to receive protection from the nation of his/her nationality in well-grounded fear that he/she is likely to be persecuted based on race, religion, nationality, the status of a member of a specific social group, or political opinion, or a stateless foreigner who is unable or does not desire to return to the “nation of settlement” in which he/she resided before entering the Republic of Korea in such fear (Refugee Act, Article 2, Item 1).

Refugees residing in the Republic of Korea are classified under the Refugee Act as a "recognized refugees" (Article 2, Item 2) and "refugee applicants" (Article 2, Item 4). In addition, foreign nationals who do not qualify as refugees under the Act, but who have a rational basis to believe their life, personal liberty, etc. are very likely to be infringed by torture, other inhumane treatment or punishment or other events and who have been granted a stay permit from the Minister of Justice as prescribed by Presidential Decree are classified as "humanitarian sojourners" (Article 2, Item 3).

The Refugee Act provides protections for "recognized refugees," "refugee applicants," and "humanitarian sojourners," respectively. Among these, "recognized refugees" receive the highest level of protection in terms of, *inter alia*, residence status, social security, and basic living standards.

First, recognized refugees residing in the Republic of Korea shall be treated in accordance with the Refugee Convention, notwithstanding other Acts (Refugee Act, Article 30, Section (1)). While residing in the country, they are granted the "Residence (F-2)" status with a three-year stay period (renewable) and are, in principle, not subject to employment restrictions under Article 23 of the Enforcement Decree of the Immigration Control Act.

Additionally, a foreigner staying in the Republic of Korea after becoming a recognized refugee shall be covered by social security at the same level as that of the citizens of the Republic of Korea, notwithstanding, *inter alia*, Article 8 of the Framework Act on Social Security (Refugee Act, Article 31). Further, recognized refugees, upon their request, are entitled to receive the protection prescribed in Articles 7 through 15 of the "National Basic Living Security Act," notwithstanding Article 5-2 of the same Act (Refugee Act, Article 32).

Where a recognized refugee or his/her child is a minor under the Civil Act, he/she shall receive the same elementary education and secondary education as the people of the Republic of Korea (Article 33, Section (1) of the Refugee Act). A recognized refugee may obtain the recognition of a school career equivalent to the degree of school education he/she has completed in foreign nations as prescribed by Presidential Decree (Refugee Act, Article 35). The Minister of Justice may implement social adaptation education, such as teaching the Korean language, for recognized refugees as prescribed by Presidential Decree and may, if desired by recognized

refugees, support the recognized refugees to receive vocational training as prescribed by Presidential Decree (Refugee Act, Article 34). Where a spouse or a minor child of a recognized refugee applies for entry, such entry must be permitted unless it falls under Article 11 of the Immigration Act (Refugee Act, Article 37, Section (1)). Article 38 of the Refugee Act states that reciprocity shall not apply to recognized refugees, notwithstanding other Acts.

Furthermore, the “Framework Act on Treatment of Foreigners Residing in the Republic of Korea,” which regulates basic matters concerning the treatment of "foreigners residing in the Republic of Korea,"—those who do not possess the nationality of the Republic of Korea but legally reside in the Republic of Korea for the purpose of residing in the Republic of Korea—also contains provisions concerning “recognized refugees” under the Refugee Act (Framework Act on Treatment of Foreigners Residing in the Republic of Korea, Article 1, Article 2, Item 1). Specifically, it allows for the provision of support to "marriage-based immigrants"—foreigners residing in the Republic of Korea who were or are married to nationals of the Republic of Korea—through education on Korean language, education on the Republic of Korea’s institutions and culture, support for child care and education for the children of marriage-based immigrants, and medical services, to assist marriage-based immigrants and their children in quickly adapting to the Republic of Korea’s society (Article 12, Section (1), Article 12, Section (2), Item 3). Article 12, Section (1) applies *mutatis mutandis* to "permanent residents"—foreign nationals with the legal status to permanently reside in the Republic of Korea (Article 13, Sections (1) and (2)). Article 12, Section (1) may also apply *mutatis mutandis* to “recognized refugees” under the Refugee Act to provide support if they choose to reside in the Republic of Korea (Article 14, Section (1)).

VI. Assessment of Merits

A. Summary of Issues

1. The Court examines whether the Processing Criterion, which limits eligibility for emergency disaster relief payments to only permanent residents and marriage-based immigrants among foreign nationals, while excluding recognized refugees, infringes Complainant's right to equality in relation to permanent residents and marriage migrants.

2. Complainant further argues that the Processing Criterion infringes the recognized refugee

Complainant’s right to a humane life. However, this claim essentially asserts that it is patently unreasonable to grant disaster relief payments to permanent residents and marriage-based immigrants while excluding recognized refugees. Since the Court evaluates whether the right to equality has been violated, a separate analysis of this claim will not be conducted.

B. Whether Right to Equality was Infringed

1. In general, the principle of equality requires treating things that are essentially alike in the same manner and treating things that are essentially different in a different manner. It does not imply absolute equality that negates all forms of differential treatment but rather signifies relative equality, which excludes discrimination without reasonable grounds in the legislation and application of the law. Consequently, discrimination based on reasonable grounds does not violate the principle of equality (Constitutional Court 99Hun-Ma516, June 28, 2001; Constitutional Court 2001Hun-Ba91, December 18, 2003; Constitutional Court 2014Hun-Ma367, March 31, 2016).

2. The Emergency Disaster Relief Payment is a one-time, gratuitous support measure. Support policies of this kind may be implemented for a subset of individuals residing in the country, considering multiple factors, such as the purpose of the policy, fiscal burden, and administrative reasons. The determination of the scope of eligible recipients for such relief policies falls within the domain where the State is granted broad discretion.

However, it is difficult to view the Processing Criterion, which limits eligibility for the Emergency Disaster Relief Payment to “permanent residents and marriage-based immigrants” among foreign nationals while excluding “recognized refugees,” as being based on reasonable grounds for the following reasons.

3. First, regarding the economic damage caused by COVID-19, there is no difference among permanent residents, marriage-based immigrants, and recognized refugees. Therefore, no distinction can be made in their eligibility to receive relief payments aimed at economic recovery.

“Permanent residents and marriage-based immigrants” legally reside in South Korea with the intent to stay permanently or long-term, and “recognized refugees,” similarly, are under the protection of our country based on the obligation of *non-refoulement*, lawfully residing here

without restrictions on employment. Therefore, it is difficult to argue that there is a difference between recognized refugees and permanent residents or marriage-based immigrants. In principle, foreign residents in our country are taxpayers, and “recognized refugees” also engage in work and economic activities while residing here, paying national taxes, such as labor income tax and comprehensive income tax, and local taxes, such as resident tax, property tax, and automobile tax. Given this, there is no reason to exclude recognized refugees from the group eligible to receive the Emergency Disaster Relief Payment, unlike permanent residents and marriage-based immigrants.

The "Framework Act on Treatment of Foreigners Residing in the Republic of Korea" (hereinafter referred to as the "Foreigners Treatment Act") sets out basic matters concerning, *inter alia*, the treatment of "foreigners residing in the Republic of Korea," who do not have South Korean nationality but legally reside in the Republic of Korea for the purpose of residence (Article 1, Article 2, Item 1). It defines the "treatment of foreigners in the Republic of Korea" as the proper treatment of foreigners residing in the Republic of Korea by the State and local governments according to their legal status (Article 2, Item 2).

As examined earlier, the Foreigners Treatment Act provides for the provision of support to "marriage-based immigrants"—foreigners residing in the Republic of Korea who were or are married to nationals of the Republic of Korea—through education on Korean language, education on the Republic of Korea’s institutions and culture, support for child care and education for the children of marriage-based immigrants, and medical services, to assist marriage-based immigrants and their children in quickly adapting to the Republic of Korea’s society (Article 12, Section (1), Article 12, Section (2), Item 3). Article 12, Section (1) applies *mutatis mutandis* to "permanent residents," foreign nationals with the legal status to permanently reside in the Republic of Korea (Article 13, Sections (1) and (2)). Also, Article 12, Section (1) may apply *mutatis mutandis* to “recognized refugees” under the Refugee Act to provide support if they choose to reside in the Republic of Korea (Article 14, Section (1)). This demonstrates that the Foreigners Treatment Act, the framework law governing the treatment of foreigners residing in the Republic of Korea, regards "marriage-based immigrants," "permanent residents," and "recognized refugees" as individuals subject to the same treatment, despite their differing legal statuses.

4. Moreover, from 1994 until the end of June 2023, 93,270 individuals applied for refugee status, of which 1,381 were granted refugee status. Therefore, it cannot be said that providing the Emergency Disaster Relief Payment to those recognized as refugees would cause significant financial strain.

Additionally, the Emergency Disaster Relief Payment is granted on a household basis. While it may be argued that it is practically difficult for “recognized refugees” to provide proof of family relationships, one could consider an alternative approach where the payments are provided to the individual recognized refugee rather than on a household basis. Thus, the administrative concern regarding the difficulty in proving family relationships cannot serve as a reasonable justification for excluding “recognized refugees” from receiving the Emergency Disaster Relief Payment.

5. Consequently, the exclusion of “recognized refugees” from the eligibility for the Emergency Disaster Relief Payment, while including “permanent residents and marriage-based immigrants” among foreign nationals under the Processing Criterion, constitutes discrimination without reasonable grounds, thereby infringing Complainant’s right to equality.

VII. Conclusion

Because the Processing Criterion violates the Constitution, the participating Justices unanimously decide as set forth in Holding.

Justices Lee Jongseok (Presiding Justice), Lee Eunae, Lee Youngjin, Kim Kiyong, Moon Hyungbae, Lee Mison, Kim Hyungdu, Jung Jungmi, and Cheong Hyungsik

* This translation is provisional and subject to revision.