

Political Participation of Immigrants in Korea

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Political Participation of Immigrants in Korea

□. Introduction

In the 19th and 20th centuries, workers moved mainly from the less developed states to industrial states in Europe and the U.S. With fast developing industrialisation of Korea, the movement of workers from countries in Asia to Korea has also accelerated since the 1990s. The globalisation, facilitated by the development of transportation and communication, has also increased the number of marriage immigrants since the 2000s. Currently, the number of the foreign residents in Korea has reached about 1 million. It has transformed Korea into multicultural society with more than 1 million immigrants, causing various social conflicts and problems that are new to Korea which has been a rather homogenous nation.

Against this backdrop, the Korean government has enacted the law to support multicultural family in 2008, established regional centres for supporting multicultural family, carried out Korean language education and occupational training tailored for immigrants, and tried to promote a better understanding of Korean culture, with an aim to help immigrants mingle into Korean society.

However, the rights of immigrants cannot be secured just with language education and occupational training. It can be secured only when their political participation is ensured, so that they are able to protect minority rights. With this basic principle in mind, this paper discusses how Korea and some other countries deal with immigrants in matters of voting rights, electoral eligibility, and election campaign.

□. Political Participation of Immigrants in Korea

1. Voting Rights, National Referendum, Resident Referendum, Resident Recall Vote

1) The Right to Vote

Article 15, Clause 1 of the Public Official Election Act grants voting rights to the Korean citizens aged 19 or over in Presidential and National Assembly elections, and does not allow foreigners to vote in such elections. It is due to a concern that if foreigners are enfranchised, there is a possibility that they might vote for the interest of foreigners, not for the interest of the people. And also, there is a concern that foreigners, a minority group in Korea, might determine who is elected or not in Presidential and National Assembly elections. The situation is not much different in other countries, as there is no country that ensures voting rights of foreigners in national elections. However, a problem arises when a spouse or a child of candidates running for election is

a foreigner, as they cannot vote for their spouse and parents. In the 2008 National Assembly Election, there were 111 candidates who had foreigner spouse.

In local elections, unlike in national elections, Article 15, Clause 2 of the Public Official Election Act was revised in 2005 to grant voting rights to foreigners who are aged 19 or over and have resided in Korea more than three years after obtaining permanent residence. As a result, the number of eligible foreign voters was 6,726 in the 2006 nationwide local elections¹, and the number increased by 100 percent to 11,662 in the 2010 nationwide local elections. It is estimated that over 50,000 foreigners will be able to exercise their voting rights in local elections in 2014.

The election for superintendent of education also applies the same Act enacted for the elections for heads of local governments. So, foreigners aged 19 or over and have resided more than 3 years after obtaining permanent residence are enfranchised. In superintendent elections in Gyeonggi-Do and Gyeongsangbuk-Do in April 2009, 1,355 foreigners (671 men and 684 women) had the right to vote.² A voter turnout of foreigners was 13.3 in the election for superintendent in Gyeonggi-Do, while that of the people in general was 12.3, showing the greater turnout rate in foreigners. In Gyeongsangbuk-Do, the turnout rate of foreigners was higher (man 11.7, woman 19.4) than that of the people (man 8.8, woman 18.4). The turnout rate of women was higher than men in both foreigners and the people, because the election day was not holiday, making it more difficult for men to go to polling stations.

2) National Referendum

Article 7 of the National Referendum Act grants voting rights only to the Korean people aged 19 or over. Permanent residents are not entitled to vote in National Referendum. It is because of the nature of the issues put to the National Referendum, which are mainly concerned about important national policies or national security.

3) Residents Referendum

According to Article 5 of the Residents Referendum Act, people aged 19 or over whose residence is registered to relevant local governments, and foreigners aged 19 or over with permanent residence registered to relevant local government are entitled to vote. Most local governments do not require a certain period of residence-such as 3 years or longer-and allow permanent residents to vote. It is because Residents Referendum is to ask the opinions of residents

¹ *General Review on the 4th Nationwide Local Elections*, National Election Commission, 2006.

² *Analysis on By-elections and Elections for Superintendent of Education*, National Election Commission of Korea, 2009.

about major issues and policies in the region of their residence. Unlike local elections that enfranchise foreigners after 3 years of permanent residence, Residents Referendum-in most local governments including Seoul, Busan, Guro-gu, Gimpo-si, Taean-gun -do not require a certain period of residence and allow all permanent residents to vote.

4) Residents Recall Vote

According to Article 3 of the Act of Recall Vote, the Korean citizens aged 19 or over and whose resident is registered to relevant local government and foreigners aged 19 or over and have resided in Korea more three years after obtaining permanent residence are entitled to vote in resident recall vote. Unlike resident referendum, in which an ordinance is mandated to determine voting rights and permanent residents are enfranchised, resident recall vote does not allow an ordinance to determine voting rights and prescribes that foreigners who have resided in Korea more than three years after obtaining permanent residence are entitled to vote. Despite the same nature of local elections, residents referendum and residents recall vote -as it is the residents who are enfranchised- an inconsistency is easy to detect. Legislatively, all of them are expected to prescribe voting rights in the same way.

2. Electoral Eligibility

1) National Elections

Article 16, Clause 1 of the Public Official Election Act states that the Korean citizens aged 40 or over and have lived in Korea more than 5 years as of the election day are allowed to stand for Presidential election. Article 16, Clause 2 of the Public Official Act states that Korean citizens aged 25 or over are allowed to run for the National Assembly elections. As electoral eligibility confers the right to represent the Korean people, foreigners are not accorded such rights. Given that the conditions of electoral eligibility are more strictly controlled than voting rights even for the Korean people, it would be hard to expect that someone without voting right are afforded electoral eligibility.

2) Local Elections

According to Article 16, Clause 3 of the Public Official Election Act, in local elections, Koreans aged 25 or over and have registered residence in the relevant local government for more than 60

successive days are allowed to run for elections. Local elections also have stricter standards in granting electoral eligibility than voting rights, thus electoral eligibility is not afforded to permanent residents.

3. Election Campaign, Campaigns for National Referendum, Residents Referendum, Residents Recall Vote

1) Election Campaign

In the Public Official Election Act, the term ‘election campaign’ means an activity for winning an election, or for making another person be or not be elected. However, a simple statement of opinion or manifestation of an intention on the election, an act of preparing candidacy and election campaign, a simple statement of opinion on support or opposition to the recommendation of a political party’s candidate, and ordinary political party activities are not regarded as an election campaign. Article 60, Clause 1 of the Public Official Election Act prescribes that a person who is not a national of the Republic of Korea, namely foreigners, shall not engage in an election campaign. So, foreigners are not to be involved in activities for winning an election, or for making another person be or not elected.

However, there is no exception clause dealing with the case when the spouse of a candidate is a foreigner. So it has been pointed out that prohibiting candidate’s spouse from election campaign activities is too discriminatory. 111 foreigner spouses of candidates in the 2008 National Assembly election could not be involved in any campaign activities so much so that they could not even distribute the candidates’ name cards. However, since the Public Official Election Act was revised on January 25th 2010, foreigner spouses of pre-candidates and candidates have been allowed to engage in the election campaign. This revision has enabled the spouses of pre-candidates and candidates to engage in election campaign activities in National Assembly election, Presidential election, local elections, and elections for superintendents of education.

Under the pre-candidate system, pre-candidate who are registered as such can engage in an election campaign even before officially registering as candidates (120 days prior to the election day in case of heads of Si/Do government, 90 days prior to the election day in case of head of Gu government). Accordingly, foreigner spouses of candidates or pre-candidates could engage in the election campaign in the 2010 nationwide local elections.

2) National Referendum

The campaigning for the issue put to National Referendum is an activity that induces an opposition or approval for the issue under the consideration of National Referendum. According to Article 28 of the National Referendum Act, the persons who cannot register as a political party member under the political party law are not allowed to engage in the election campaign, and Article 22 of the Political Party Act prohibits foreigners from becoming a political party member. So, foreigners are not allowed to engage in the campaign for National Referendum.

3) Resident Referendum

The campaigning for the issue put to Resident Referendum is an activity that induces an opposition or approval for the issue put to the Resident Referendum, or makes others choose one of the two options put forward by Resident Referendum. However, a simple statement of opinion or manifestation on the issue under the consideration is not regarded as a campaign. Also, Article 21, Clause 2 of the Resident Referendum Act stipulates that people without voting rights are not allowed to engage in the campaigning. However, as foreigners are entitled to vote in Resident Referendum, enfranchised foreigners can engage in campaign activities.

4) Resident Recall Vote

The campaigning for the issue put to resident recall vote is an activity that approves or opposes the issue that would be put to resident recall vote. However, a simple statement of opinion or manifestation of intention on the issue under the consideration, and preparatory activities for the campaigning are not to be regarded as the campaigning. Article 18, Clause 3 of the Recall of Elected Officials Act also applies the Public Official Election Act in determining the persons who are allowed to engage in the campaign activities, meaning that foreigners, not a national of Korea, shall not engage in the campaign activities. According to exception clause, foreigners are only allowed to make a simple statement of opinion or manifestation of intention on the issue that would be put to Resident Recall Vote.

☐. Political Participation of immigrants in various countries

1. Voting Rights

1) 27 EU Member States

In most countries, the right to vote in a national election is the privilege of a national, which is

not granted to foreigners-even if they are permanent residents. When it comes to local elections, most countries extend the franchise to the people who hold the citizenship. Although most EU states grant voting rights to immigrants from EU countries in local elections at the county level, they do not recognize voting rights in the local elections at the state/provincial level. On the other hand, Belgium, Estonia, Denmark, Finland, Island, Netherlands, Slovenia, Slovakia, Sweden, Rumania, Bulgaria, and Hungary extend voting rights in local elections at the county level, even to the immigrants from outside of the EU. Britain, Spain, and Portugal also extend voting rights to the immigrants from their former colonial states or the Commonwealth states, in local elections at the county level. ³When it comes to local elections at the state/provincial level and national elections, Ireland, Portugal, and Britain extend voting rights to the immigrants, though to the limited extent.

In Denmark, all adults aged 18 or over who have resided there for more than three years have the right to vote in local elections since 1981. The 1981 Act was very controversial, getting passed with just 45 percent approval. In 1985, the turnout rate of immigrants was 63 percent. The Netherlands revised the local election act in 1985, extending the franchise to all immigrants including EU citizens in local elections. With this revision, all immigrants who have resided in the Netherlands for more than 5 years, except public officials at diplomatic establishments, have been entitled to vote in local elections. It was the 1986 local elections that immigrants cast their vote for the first time in local elections, in which the turnout rate recorded lower than 30 percent.⁴ However, immigrants were elected to 20 seats out of 714 seats in local councils.

In local elections and national elections, Britain extends voting rights to the citizens aged 19 or over of the British Commonwealth and the Republic of Ireland. In case of local elections, they should be residents in electoral districts and registered in the voters roll as of the date of voter registration. Citizens from the EU are entitled to vote in local elections at the county level, while the citizens from Ireland, Malta, and Cyprus are also entitled to vote in local elections at the state, provincial levels and in national elections.

Since 1985, Ireland, based on reciprocity, has extended voting rights to the British citizens aged 18 or over in local elections after 6 months of residence. Since then, all immigrants, as well as EU citizens, have been entitled to vote in local elections. Furthermore, British citizens have been entitled to vote in national elections (Ireland's House of Representative election).

<Figure 1. Voting Rights of Resident Aliens in 27 EU Member States>

³ Ruby Gropas, "Immigrants and Political Rights", *The Bridge Magazine*, (http://www.bridge-mag.com/magazine/index.php?option=com_content&task=view&id=201&Itemid=39), accessed on Dec 8, 2009.

⁴ *Political Participation of Non-Citizen in Germany and Western Europe*, Reuter, 1990.

Elections Countries	Local Elections		National Elections including state and regional elections	
	EU Citizens	Third Country Nationals	EU Citizens	Third Country Nationals
Greece	Yes	No	No	No
The Netherlands	Yes	Yes	No	No
Denmark	Yes	No	No	No
Germany	Yes	No	No	No
Latvia	Yes	No	No	No
Romania	Yes	Yes	No	No
Luxembourg	Yes	Yes	No	No
Lithuania	Yes	Yes	No	No
Malta	Yes	No	No	No
Belgium	Yes	Yes	No	No
Bulgaria	Yes	Yes	No	No
Cyprus	Yes	No	No	No
Sweden	Yes	No	No	No
Spain	Yes	Restrictions apply	No	No
Slovakia	Yes	Yes	No	No
Slovenia	Yes	Yes	No	No
Ireland	Yes	Yes	UK citizens	No
United Kingdom	Yes	Commonwealth citizens	Restrictions apply	Commonwealth citizens
Austria	Yes	No	No	No
Estonia	Yes	Yes	No	No
Italy	Yes	No	No	No
Czech Republic	Yes	No	No	No
Portugal	Yes	Restrictions apply	No	Restrictions apply
Poland	Yes	No	No	No
France	Yes	No	No	No

Finland	Yes	Yes	No	No
Hungary	Yes	Yes	No	No

Sources: *The Bridge Magazine* (<http://www.bridge-mag.com>), Jo Shaw, *Migrants' Political Rights: What role for Scottish political institutions?*, University of Glasgow (http://www.gla.ac.uk/media/media_51218_en.pdf)

Although the Constitution of Portugal grants voting rights to only Portuguese nationals, based on reciprocity immigrants from Brazil who speak Portuguese can vote in national and local elections. Also based on reciprocity, immigrants from Argentina, Israel, Norway, Peru, Uruguay, and Venezuela can vote in local elections in Portugal. Spain, also based on reciprocity, grants voting rights to immigrants from Norway, which is not a member state of the European Union.

2) Non-EU States

In the US, only US nationals who are 18 years old or above are granted voting rights, and different residency requirements are applied depending on the states. For instance, the deadline to register to vote in California is 15 days before an election day. In some 24 states including Missouri and South Carolina, the deadline for voter registration is 30 days before an election day. However, some 22 states including Arizona, Colorado, New Hampshire and Wisconsin have residency requirements (50 days in Arizona; 32 days in Colorado; 10 days in both New Hampshire and Wisconsin). Accordingly, foreign nationals are not granted voting rights in the US.⁵

In France, voting rights are granted only to French nationals who are 18 years old or above, and 5 years of residency requirement is applied to naturalized foreigners. Furthermore, 6 months of residency is required for voter registration. Just like France, Germany grants voting rights only to German nationals who are 18 years or above.

In Japan, voting rights are granted only to Japanese nationals who are 20 years or above. Although there have been debates on granting voting rights to foreigners since the highest court in Japan ruled in February 1995 that it is not against the Constitution to grant voting rights to alien residents in local elections, due to strong objections of the conservatives it was not legislated.

With the Democratic Party's landslide victory in the 2009 general election, granting voting rights to resident aliens actually seemed possible since it was the Party's one of election pledges. However, conservatives of the Democratic Party and Liberal Democratic Party voice their concerns and objections about having foreigners influence the politics in Japan. So, granting voting rights to

⁵ *Comparative Study on Election Systems*, National Election Commission of Korea, 2005.

foreigners seem rather difficult.

Among the non-EU states that grant voting rights to foreigners in local elections are Iceland, Norway, Switzerland, Australia, and New Zealand. In Switzerland, only some states grant voting rights to foreigners, and these states grant voting rights in both local and national elections. UK citizens are granted voting rights in both local and national elections in all states of Australia while foreigners from other countries can vote in local elections in South Australia, Tasmania, and Victoria in Australia. In New Zealand, foreigners can vote in both local and national elections.

<Figure 2. Voting Rights of Foreign Nationals in Non-EU States >

Elections Countries	Local Elections	National Elections including state and regional elections
Norway	Yes	No
New Zealand	Yes	Yes
United States	No	No
Switzerland	Some states	Some states
Iceland	Yes	No
Australia	Yes	Yes
Canada	No	No

Sources: *The Bridge Magazine* (<http://www.bridge-mag.com>), Jo Shaw, *Migrants' Political Rights: What role for Scottish political institutions?*, University of Glasgow (http://www.gla.ac.uk/media/media_51218_en.pdf)

2. Right to Stand for Election

Almost in all countries the right to stand for election is more strictly restricted than the right to vote. Regardless of permanent residency status, there is no country where foreign nationals are granted the right to stand for national election. However, Denmark, Finland, Ireland, the Netherlands, and Sweden grant the right to stand for local election to foreign nationals.⁶ In case of the Netherlands, foreign nationals stood for local elections for the first time in 1986, and among 714 local council seats, 20 seats went to immigrants.⁷

⁶ Ruby Gropas, "Immigrants and Political Rights", *The Bridge Magazine*, (http://www.bridge-mag.com/magazine/index.php?option=com_content&task=view&id=201&Itemid=39), accessed on Dec 8, 2009.

⁷ *Political Participation of Non-Citizen in Germany and Western Europe*, Reuter, 1990.

**<Figure 3. Non-EU State Immigrants' Right to Stand for Elections
in 27 EU Member States >**

Elections		Countries
European Council and National Elections		None
Local Elections	Non-EU state immigrants	Denmark, Finland, Ireland, the Netherlands, Sweden
	Immigrants from commonwealth nations or former colonies	None

Source: The Bridge Magazine (<http://www.bridge-mag.com>)

In UK, the right to stand for election is granted to UK nationals who are 21 years old or above, the nationals of the commonwealth nations and the nationals of Ireland. In the United States, a person who is 30 years old or above, and who has been 9 years a citizen of the US is qualified to stand for a senate election. For the House of Representative, a person who is 25 years old or above, and has been 7 years a citizen of the US is qualified to stand for a congressional election. Therefore, in the United States, no person is allowed to stand for either a senate or congressional election unless that person has been 7 years a citizen of the US.

In France, French nationals who are 30 years or above, have the voting rights, and have completed military obligations are qualified to stand for a senate election. Also, a person who has been a 10 years French citizen by marriage or naturalization can stand for a senate election. For the House of Representative, French nationals who are 23 years or above and a person who has been a 10 years French citizen by marriage or naturalization can stand for an election. Therefore, in France, no person is allowed to stand for an election unless that person has been 10 years a French citizen.

On the other hand, in Germany, any German nationals who are 18 years or above can stand for an election. No other condition is stated regarding the citizenship status. In Japan, a Japanese national who is 30 years old or above is qualified to stand for an election to the House of Councillors. A Japanese national who is 25 years old or above is qualified to stand for an election to the House of Representatives. In Italy, a person who has the voting rights and is 40 years old or above can stand for a senate election, and a person who has the voting rights and is 25 years old or above can stand for an election to the House of Representatives.

3. Election Campaign

In the Public Official Election Act of Korea, the term ‘election campaign’ means an activity for winning an election, or for making another person be or not be elected. However, a simple statement of opinion or manifestation of an intention on the election, an act of preparing candidacy and election campaign, a simple statement of opinion on support or opposition to the recommendation of a political party’s candidate, and ordinary political party activities are not regarded as an election campaign. The Act strictly regulates the campaign period, campaign methods, and the subject of campaign. On the other hand, most countries-except for Japan-allow election campaigns without constrain, and do not explicitly regulate the definition, period, methods, and subject of an election campaign.

Most countries around the world do not have any particular regulation about the election campaign by foreigners. Only Japan, Canada, and the Philippines do have regulations concerned about the election campaign by foreigners. In case of Japan, it is prescribed that people without electoral eligibility or voting rights shall not engage in the election campaign, and voting rights are granted only to the Japanese people aged 20 or over.⁸ This effectively means that all foreigners, including those who hold permanent residency status, are not given voting rights and electoral eligibility, and cannot engage in the election campaign. The Omnibus Election Code of the Philippines prohibits foreigners, encompassing a natural and a juristic person, from participating or influencing elections, supporting directly or indirectly any particular candidates or political parties, and donating or contributing money in relation to political activity or election campaign. The Philippines explicitly limits the election campaign by foreigners.⁹

The Election Act of Canada regulates that non-Canadians living abroad are prohibited from encouraging voters to cast or not to cast a vote for any particular candidates in any ways. The purpose of this regulation is to prohibit the US citizens or British citizens living abroad -outside Canada-from interfering with elections in Canada, and not to prohibit foreigners living in Canada from engaging in the election campaign. Thus, foreigners living in Canada deem to be able to engage in the election campaign. Besides the abovementioned cases, most countries without particular clauses on the election campaign of foreigners are deemed to have no restrictions on the election campaign by foreigners.

□. Prospects of Immigrants’ Political Participation

It is up to each state to determine the extent to which immigrants are allowed to participate in

⁸ *Public Official Act of Japan*, Vol. 1, National Election Commission, 2004.

⁹ Election Act of the Philippines, National Election Commission, 2004.

politics, depending on their different circumstances. For instance, if there exist some obstacles for their own people to participate in politics, it would be very difficult even to bring up the matter of political participation of immigrants for discussion.

However, we can think of two standards that should be applied in considering political participation of immigrants. First of all, the right of political participation including voting rights is basic human rights, so it should be ensured as much as possible. Second, setting aside national elections for the moment, political participation of immigrants in local elections-an opportunity to practice the principle of resident self-governing- should be ensured to the greatest extent possible, considering that the fundamental idea of democracy is that the government must be based on the consent of the governed.