



THE ENGLISH TEACHER'S GUIDE TO KOREA

Living, Working, and Thriving in Korea Sparkling

By
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Chapter 6

ATEK Press

The Association for Teachers of English in Korea provides the following services to the general public, members and non-members alike:

- Monitoring of proposed legislation and regulations which may affect non-citizen English teachers in Korea.
- Translation of proposed and existing legislation and regulations (domestic and international) and analysis of their possible effects on non-citizen English teachers in Korea.
- Advocacy for English teacher concerns at the national and local levels.
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CHAPTER 6: KNOWING YOUR RIGHTS

LEGAL PROBLEMS

OVERVIEW

Foreigners who run afoul of legal problems in Korea face significant challenges. Korean courts are of course conducted in Korean, and most Koreans represent themselves *pro se* (that is, without a lawyer). Unless one is fluent in Korean, it will not be possible to represent oneself *pro se* in court, which means services of a lawyer may be necessary. Criminal defense attorneys and civil lawyers are expensive, usually requiring three to five million won up front as an initial retainer. Labor lawyers are generally much more affordable, and may work for as little as a few hundred thousand won, depending on the complexity of your case.

Legal problems can be grouped into four categories:

- Traffic violations (which may or may not include criminal charges)
- Non traffic-related criminal charges
- Civil action (lawsuits)
- Employer-employee disputes

TRAFFIC VIOLATIONS

Traffic violations are covered in depth later in this chapter. If a traffic case goes to court, the other party is most likely to represent him or herself *pro se*.

NON TRAFFIC-RELATED CRIMINAL CHARGES

Criminal charges are also covered in depth further on in this chapter. Remember that in a case where private property is damaged or someone is injured, a private cash settlement with the victim will be taken into consideration, and can result in a reduced penalty, suspended sentence, or even dismissal of the charges.

CIVIL ACTION (LAWSUITS)

Unlike in Western countries, it is common for Koreans to sue *pro se* (without a lawyer representing them). This can be problematic for foreigners, as retaining a lawyer to defend yourself will cost you a lot of money, while suing you *pro se* won't cost the plaintiff much.

There is a persistent rumor in the foreign community that if you lose a lawsuit and are ordered by the court to pay damages to the plaintiff, you will be barred from leaving Korea until the damages are paid. This is patently untrue. You can leave Korea whenever you like, and the plaintiff has little recourse to recover his/her court ordered damages. However, if you have fines resulting from criminal charges or have tax problems, it is possible that you may be subject to an exit ban.

EMPLOYER/EMPLOYEE DISPUTES

Foreign workers in Korea sometimes have disputes with their employers, related to: contract disputes; disputes regarding pay; problems related to tax, pension, and/or medical insurance; and a number of other problems. If you feel your rights have been violated, you may file a complaint with the relevant authority: the labor board, the national tax service, or the national pension scheme.

The Association for Teachers of English in Korea has copies of labor, pension, and tax complaint forms on their website, along with English translations of the forms and their instructions, in the Member Resource Library.

KOREAN CRIMINAL LAW AND YOU

The Constitution of the Republic of Korea, as amended and promulgated October 29, 1987, states the following:

Article 12

1. All persons shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures.

2. No one shall be tortured or be compelled to testify against oneself in criminal cases.
3. Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: Provided, That in a case where a criminal suspect is an apprehended *in flagrante delicto*, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an *ex post facto* warrant.
4. Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by Act.
5. No person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel. The family, etc., as designated by Act, of a person arrested or detained shall be notified without delay of the reason for and the time and place of the arrest or detention.
6. Any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention.
7. In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession.

Article 27

1. All citizens shall have the right to be tried in conformity with the Act by judges qualified under the Constitution and the Act.
2. Citizens who are not on active military service or employees of the military forces shall not be tried by a court martial within the territory of the Republic of Korea, except in case of crimes as prescribed by Act involving important classified

military information, sentinels, sentry posts, the supply of harmful food and beverages, prisoners of war and military articles and facilities and in the case of the proclamation of extraordinary martial law.

3. All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary.
4. The accused shall be presumed innocent until a judgment of guilt has been pronounced.
5. A victim of a crime shall be entitled to make a statement during the proceedings of the trial of the case involved as under the conditions prescribed by Act.

DIFFERENCES BETWEEN KOREAN AND WESTERN CRIMINAL JUSTICE SYSTEMS

Reading the above sections of the Korean Constitution may lead one to conclude that the Korean and Western legal systems are virtually the same. Although this may seem so, there are a number of very significant differences. The main point to remember is that a foreigner in Korea is subject to Korean laws, *not* the laws of their home country (although some foreigners may be subject to both; the citizens of some countries are still subject to some or all of the laws of their country even when abroad). Below are some of the particulars of the Korean legal system.

ACCESS TO COUNSEL

A foreigner who is used to having his or her lawyer present at every step of legal proceedings, may be disconcerted to find that under Korean law an attorney need not be present during questioning of a suspect by the public prosecutor's office. Police and public prosecutors may also question a suspect without an attorney present. However, the suspect may refuse to answer questions during the police and public prosecutors' interrogations. In such cases, the authorities will usually allow counsel to attend.

COMMUNICATION

Americans, British, and other foreigners accustomed to their "one phone call" may be taken aback when Korean authorities do not allow

them that privilege. Under the Consular Convention, Korean police officials must notify the Embassy as soon as a foreigner is arrested. The Police may make this notification in writing, however, and it might be a few days or more before the Embassy is apprised of an arrest. In practice, if a foreign suspect taken into police custody has relatives or an attorney in Korea, law enforcement is required to and will notify the suspect's family and attorney of the arrest promptly.

DOUBLE JEOPARDY

Perhaps the most marked difference between foreign and Korean legal systems is the possibility of double jeopardy in Korea. Having been found innocent of a crime is no protection against being tried again for the same offense. If the prosecutor feels the verdict is incorrect, he may appeal that verdict and retry an already-acquitted individual.

BAIL

Bail is legally possible under Korean statutes. However, bail is frequently not granted and may not be as readily available as in your home country.

SMUGGLING AND OTHER CUSTOMS VIOLATIONS

Korean customs laws are as strict as, if not stricter than many Western laws. Violators of these laws are subject to fines up to ten times the normal customs duty, confiscation of the contraband, and jail sentences of up to ten years.

Importing or exporting certain prohibited articles detrimental to national security, public health or public morals (such as classified government information or counterfeit money) is punishable by imprisonment of up to 10 years or a fine of up to 20 million Won. Importing or exporting goods which differ from those reported to customs authorities or failing to report imported or exported goods may result in imprisonment of up to 5 years prison or fine a fine equal to the higher of 10 times the normal duty or the purchase price of the goods.

Deliberately misstating the quantity of merchandise to evade payment of duty can result in 3 years prison and fines of 500% of the regular duty or purchase price of goods, whichever is higher. In the past, confiscated merchandise has included gold ingots, jewelry and

unset precious stones, as well as bear bladders, deer antlers, and other items used in Oriental medicine. It is also possible that the goods and any vehicle or other articles used to bring the goods into or out of Korea may be confiscated.

DRUGS

Drugs and drug abuse are governed by the Narcotic Substance Control Act of 2000 as well as by the Criminal Act. These laws regulate the import, export, manufacture, preparation, subdivision, sale, intermediate sale or purchase, and purchase of narcotics, as well as possession of narcotics for the purpose of import, export, manufacture, preparation, subdivision, selling or purchase; serving as an intermediary for buying and selling of narcotics. Provisions under these laws mandate minimum prison sentences of one year.

Korean government policy is aimed at discouraging the use of dangerous and habit-forming drugs in the country. Korean statutes classify marijuana as a "dangerous narcotic." Parole is virtually never given in drug-related cases. Recent legislation provides that trafficking or abusing drugs may result in prison for an indefinite term and confiscation of illegal proceeds and the illegal substance.

LEGAL PROCEDURES

QUESTIONING

Police officers are allowed to stop and question individuals who are suspected of having committed crimes or who are considered likely to commit crimes. However, police officers cannot force such individuals to answer their questions. Public prosecutors and police officers, before listening to statements from suspects, are required to inform them of the fact that they can refuse to give statements.

Police officers should identify themselves by name, rank, and agency (e.g. "I am Officer Kim with the Busan Metropolitan Police Agency,") but if they do not, you have the right to ask them for that information. If you are questioned by a person who is in plain clothes (such as a detective), they have an obligation to show you identification and should do so without your having to ask. If a police officer requests that you get in his/her car so that he/she may take you to a police station for questioning (or for any other reason), doesn't

provide you with a clear reason, and you do not want to go, you have the right to refuse. Simply put, if you are not being arrested, you do not have to go. If the police officer insists, you can call 112 for help immediately or contact the police inspection unit at the local police station afterward. You also have the option of making a complaint to your embassy. Sources inside a major metropolitan police agency tell ATEK that they believe this to be a very effective method to ensure fair treatment.

Lawyers must be present at trials but are not allowed to be present during most phases of a criminal investigation. If you request that your lawyer be present for questioning, your request may be refused. However, you may refuse to answer questions without your lawyer present or request help and advice from your embassy. If you do so, the police will try to find a way to assist you with a lawyer. It is important that you remain calm and make requests, as if you are asking for their help. Making demands, threatening lawsuits or action from your embassy, or displaying a belligerent attitude will mainly just cause you problems.

Some phrases that you may find helpful include:

- Am I being investigated for a crime?
Je ga beomjweiro josada neun geongayo?
제가 범죄로 조사받는 건가요?
- What is the crime?
Jweimyeongi mweongayo? 죄명이 뭔가요?
- Am I being arrested?
Je ga chepodwi neun geongayo? 제가 체포되는 건가요?
- I need an English interpreter.
Yeongeo tongi pilyohamnida. 영어통역이 필요합니다.
- I would like to contact a lawyer.
Byeonhosawa mannago shipeoyo. 변호사와 만나고 싶어요.
- I don't understand what my rights are. Can someone please explain them to me?
Jeoui gweoliga mueotinji ihaega andweiyoo, dareun sarami jeoeye seolmyeongeun hejuseyo.
저의 권리가 무엇인지 이해가 안되요, 다른 사람이 저에게 설명을 해주 세요?
- I would like to talk to the police inspector.
Kyeongchal cheongmundamdanggwon hagoiyagihago shipeoyo.
경찰 청문담당관 하고 이야기하고 싶어요?

ARREST

A warrant is generally required before an individual can be arrested in Korea. No warrant is required, however, for an individual caught in the act of committing a crime. In addition, no warrant is required where an individual is suspected of committing a serious crime if there is a risk that evidence of the crime may be destroyed or that the individual may try to escape.

There is a general right of arrest when one of the following applies:

- a person is caught or pursued in the act of committing an offense
- where it is suspected he/she is going to flee
- his/her identity cannot be established.

An arrested individual has the right to receive immediate assistance from a lawyer. Do not request or demand a court-appointed lawyer, as such lawyers are appointed after you are arrested, charged with a crime, and brought before a judge. The court makes the decision, and generally Korean courts only appoint lawyers for people who are mentally incapacitated, over 70 years old, or indigent.

Within the limits of the law, an arrested individual may receive visits from a lawyer or other interested person, may receive medical treatment, and may receive authorized medication.

THE ROLE OF YOUR EMBASSY IN AN ARREST

According to the Vienna Convention on Consular Relations (1963) Article 36, your consulate has the following rights: (1) consular officers shall be free to communicate with nationals of their State and to have access to them. Nationals of the foreign State shall have the same freedom with respect to communication with and access to consular officers of the foreign State; (2) if you so request, the Korean police shall, without delay, inform your consular post if you are arrested or committed to prison or to custody pending trial or are detained in any other manner. Any communication addressed to the consular post by a person arrested, in prison, custody or detention shall be forwarded by the authorities without delay. The authorities shall inform you without delay of your rights under Article 36,

subparagraph 2; (3) consular officers shall have the right to visit a national of their State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of their State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

Please note that the term “consular post” used above applies to both a consulate and an embassy (an embassy is actually made up of several different entities, including a diplomatic mission, a consular mission, and others). In other words, there is a consular post at your embassy.

We have included specific messages for foreign nationals from their respective embassies below. All these statements are taken from embassy websites, retrieved August 15, 2008. Note that they all conform to the Vienna Convention as enumerated above.

AUSTRALIA

“Consular staff cannot use their position to influence unduly or bypass local laws or processes, even when these would appear by Australian standards to be unfair or unnecessarily arduous. While consular staff can sometimes use their knowledge and understanding of the local environment to facilitate support, they must work within the legal and administrative constraints applying in their host country.”

Australian consular officials can provide assistance to you if you are arrested, notify next of kin, provide a list of local lawyers, conduct prison visits, and ensure an Australian receives the same treatment as could reasonably be expected by the host country's own citizens. Australian consular officials cannot provide funds to pay your legal costs, represent you at legal proceedings or give legal advice, cannot get you out of prison or obtain special treatment for you in prison.”

BRITAIN

The British Consulate maintains a detailed booklet outlining help available for British nationals who have been arrested or imprisoned

overseas, which can be found here: <http://ukinkorea.fco.gov.uk/resources/en/word/3059742/doc-consular-prison-pack>. Summary information follows:

“The British Consulate can answer questions about your welfare and about prison regulations but not questions about legal matters. You should ask your lawyer or the court these kinds of questions. We can give you a list of English-speaking lawyers. When a British citizen is arrested and detained in Korea the Korean authorities must inform the British Embassy. This is usually done in writing and normally takes a week to ten days to reach us. We may be informed much more quickly by friends or relations. In Korea you do not have the right to make a telephone call when you are arrested. However you can ask the prison/detention officer to inform your next-of-kin. He can do this direct or he can call the Embassy and ask us to pass on a message. For reasons of confidentiality we are not permitted to tell anyone that you have been detained or what the charges are without your permission. The Embassy must have your permission to discuss your case, or to confirm your detention, with anyone. However, if your family becomes aware of the detention (e.g. via the media) it will add to their distress if we cannot discuss the case with them, so please consider your decision carefully about whether you wish us to inform your family. N.B. If the prisoner is a minor (under 18), we must inform the next of kin.”

As soon as we have been notified (whether by family, friends or officially) we will apply for a visiting permit and you will be visited within two working days of us receiving the permit. Please note that it can take seven to ten days for a permit to arrive although in most cases it is quicker. We will send you information on the Korean judicial system and ask your next-of-kin if they would like to receive it too. We can also give your next-of-kin the address of the prison and the prison bank account number in case they wish to transfer any money to you, or tell them how to transfer money to you, without bank charges, through the Foreign & Commonwealth Office in London.”

How the British Embassy Cannot Help

"We cannot get you out of prison, pay fines or stand bail, or interfere in local judicial procedures to get you out of prison or secure you an earlier trial date; we cannot investigate a crime. We cannot intervene with police or prosecutors except to assure that British Nationals are treated no worse than Koreans would be under the same circumstances. There are no British government funds to pay for Lawyers, fines or other legal expenses. If a British National cannot get funds to pay a Lawyer, he must rely on a court-appointed defender. If he is held in Immigration Detention awaiting deportation, we cannot supply a ticket home except through a repatriation loan when all other possible sources of funds are exhausted. We cannot supply British food, bedding, clothing or other amenities."

CANADA

"We can contact, at your request, your relatives or friends and ask them to send you emergency funds. If you are arrested, we can try to ensure equitable treatment under local laws. At your request, we can inform relatives and friends about your arrest and try to ensure that legal rights and processes are extended to you consistent with the standards of the host country."

NEW ZEALAND

"The Embassy, by regulation, cannot enter any case; conduct any investigation; or act as lawyers or mediators in any personal professional conflicts experienced by New Zealand citizens. If you do find yourself in need of an attorney, we can provide you with a list of attorneys; however, we are unable to recommend any specific lawyer from this list. We will attempt to answer all your questions or complaints."

SOUTH AFRICA

"The South African Embassy can contact and visit SA citizens arrested or detained and, in certain circumstances, arrange for messages to be sent to relatives or friends. South African missions abroad, and Consular staff in particular, cannot: intervene in court proceedings; get you out of prison; give legal advice or instigate court proceedings on your behalf; get better treatment for you in hospital or prison than is provided for local nationals; or investigate crimes."

UNITED STATES OF AMERICA

"The U.S. Embassy cannot assist prisoners with legal representation. When a consular officer visits someone who has been arrested, we provide a list of local attorneys who are known to speak English and to have dealt with foreigners' cases. In most cases, the Embassy is promptly notified by Korean law enforcement officials of the arrest or detention of any U.S. citizen. American Citizen Services (ACS) makes every effort to make an initial visit to the detainee soon after the arrest, with follow up visits periodically. Arrangements will be made for more frequent visitation as circumstances warrant. Our job is to ensure that the arrested U.S. citizen is being treated fairly under local laws, understands the charges, has access to legal counsel, and has any special or emergency needs met to the extent possible. The Embassy can also keep a detainee's relatives or friends informed of the situation if that is the person's wish."

DETENTION

The police can detain individuals for up to 10 days before formal charges are filed. At the end of this period, police must move the case to the prosecutor's office. A public prosecutor then has ten days after in which to determine whether or not to indict the individual; however, the public prosecutor may make a request to the court for an additional 10-day extension. The courts normally grant these requests. There is no formal arraignment procedure in the Korean legal system.

Apart from detention in jail, foreigners may be forbidden to leave the country if legal actions are still pending. Such individuals may be held in immigration detention or may merely be subject to an exit ban.

COMPLAINTS ABOUT THE POLICE

If one feels one was treated unfairly by the police, or is unsatisfied with how they have handled a situation, one may contact the police inspector's unit. Every local police agency in Korea has an Inspection Unit that is charged with reviewing the agency's performance and ensuring that police perform their duties correctly. Ask your local police station for the number to the Police Inspection Unit, or to speak with someone from their office. If one does not wish to lodge one's

complaint through the police department, one may also contact one's embassy.

INVESTIGATION AND INDICTMENT

While one is in custody pending trial, the Public Prosecutor's Office (PPO) investigates the alleged offense. The PPO may interview the accused and any witnesses and collect any evidence with the help of the police. When there is enough evidence to open a prosecution, the investigation stage is formally closed and the trial stage is opened. The PPO must then produce an indictment which sets out the details of the accused, the crime of which he is accused, when and where it took place, the legal definition of the crime and the criminal laws applicable to the case. When the judge receives the indictment, date(s) for the trial will be set.

TRIAL

There are six kinds of courts in Korea:

- The Supreme Court,
- High Court,
- District Court,
- Family Court,
- Patent Court, and
- Administrative Court.

Trials are conducted at the District Court level. Courts are required to complete a case within six months of receipt from the public prosecutor's office.

APPEALS

After sentencing, appeals may be submitted to the original court within seven days. In some cases, further appeals to the High Court and Supreme Court are possible. The prosecutor may also file requests for appeal of verdict and/or sentence.

PAROLE

In Korea, the law makes a provision for the early release of prisoners serving a sentence. The public prosecutor is obliged to consider automatically whether you should be released when you have served two-thirds of your sentence. In practice, however, a minimum of approximately two-thirds (usually about 70%) of a sentence must be

served before parole is considered. Foreign inmates are usually treated more leniently than Koreans by parole boards, but the same policy of serving at least two-thirds of the sentence before parole is granted still applies. Parole is never granted in drug cases. It is common practice to deport prisoners on release.

BAIL

In certain circumstances the prosecutor may give you bail after being detained for a certain period and before your court appearance for sentencing. This is on the understanding that you will not flee the country. You will then be moved from the detention/holding centre to the nearest immigration centre. The prosecutor/immigration authorities will want assurances from the embassy that you will not flee the country. The embassy or the immigration authorities will hold onto your passport. The embassy must have your written permission from you to hold on to your passport until the outcome of your court case.

LEGAL REPRESENTATION

Any individual who is arrested for anything more than a minor violation is urged to obtain competent legal counsel promptly. The court will appoint a lawyer for any accused individual who is a minor, is over 70, is deaf, is mentally challenged or incapacitated, or cannot afford a lawyer. Foreign nationals used to a vigorous public defender should know that Korean public defenders are regular lawyers doing *pro bono* work, and that the defense in such cases can be *pro forma*, with little attempt to exonerate the accused.

You can employ a lawyer for yourself at any time after your arrest. Normally, if you employ a privately-engaged lawyer, he or she will ask for a large advance on estimated legal fees (which may be very high) before he or she will take on your case. Your embassy cannot pay legal fees or guarantee to a lawyer that you will pay them.

If you do not have a lawyer when you come to trial, the court will appoint a legal-aid lawyer free of charge. If you cannot afford a privately-engaged lawyer you can apply before the trial for a legal-aid lawyer through the prison.

The court may also appoint a lawyer at the request of the accused. The court will automatically appoint a legal-aid lawyer if the

offense is so serious or the case is so complicated that you will need legal assistance to help defend yourself. The same applies if it is obvious that you are not capable of handling your own defense.

PUBLIC PARTICIPATION IN CRIMINAL TRIALS

As of January 1, 2008, a new system which allows ordinary citizens to participate in criminal trials as jurors has been introduced in Korea. Upon the request of the defendant, the jury consisting of 5 to 9 citizens attends a felony criminal trial along with professional judges and provides *advisory* opinions. Jurors are required to independently consider whether the defendant is guilty or not and reach a unanimous verdict; failing that, they depend on majority vote. The jury also presents individual opinions on sentencing after the discussion with judges. However, the jury verdict and its view on sentencing do not have binding power over the judges' decision.

LIFE IN A CORRECTIONAL FACILITY

Foreigners are normally treated fairly by Korean correctional authorities. Special sections are generally set aside for foreigners. Medical treatment is available in all correctional facilities. Medical problems a correctional doctor cannot handle are referred to local hospitals. Correctional officials are generally interested in making sure that foreigners in their custody are treated as humanely as possible, without opening themselves to accusations of favoritism.

Inmates are allowed to read, listen to the radio and watch TV. Inmates are not allowed to smoke or drink alcohol. But, they are allowed to drink coffee and tea. Foreign inmates are sometimes kept in solitary cells but they often get a chance to talk to other inmates if they work. Meals are adequate. Foreigners sometimes cannot fully adjust to the Korean diet, so they are often provided with western food upon request. Inmates may earn money in the correctional work program or have money sent by relatives. These funds can be used to buy a small quantity of supplemental food.

Visitors are allowed but the number and length of visits are strictly controlled. Incoming and outgoing mail is censored. Telephone calls are permitted by inmates who have obtained 1st or 2nd ranks. Other inmates are able to make telephone calls only upon permission by the wardens.

Many correctional facilities have workshops where some inmates may be allowed to work at various trades and earn pocket money. Prisoners who have special skills or who have demonstrated good behavior may be given opportunities in prison by performing tasks in fields where they have previous experience. Inmates are given a ranking of 1-4 depending on behavior, participation in work programs, and other relevant factors. Authorities consider this ranking when deciding whether to grant parole.

Inmates may be corporally punished for assaulting or talking back to guards, or for refusing to cooperate or follow instructions. After inmates submit and act contrite, they are often again treated kindly. Foreign inmates should not expect to be spared punishment if Korean prisoners would be punished for the same behavior.

SOURCES

British Embassy, *Information for British Nationals Detained/Imprisoned in South Korea*,

<http://ukinkorea.fco.gov.uk/resources/en/word/3059742/doc-consular-prison-pack> (retrieved 30 Sep. 2008).

Personal correspondence with Ministry of Justice (March 2008).

Unpublished interview with Seoul Metropolitan Police Agency (Sep. 2008).

US Embassy, *Teaching in Korea*, <http://seoul.usembassy.gov/teach.html> (retrieved 30 Sep. 2008).

SELECTIONS FROM THE *IMMIGRATION* *CONTROL ACT*

URL of Entire Act:

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN011498.pdf>

IMPORTANT ARTICLES FOR INSTRUCTORS

■ ARTICLE 17 (SOJOURN AND ACTIVITY SCOPE OF FOREIGNERS)

- (1) Any foreigner may sojourn in the Republic of Korea within the scope of his/her status of sojourn and period of sojourn.
- (2) No foreigner sojourning in the Republic of Korea shall engage in any political activity.
- (3) If a foreigner sojourning in the Republic of Korea is engaged in any political activity, the Minister of Justice may order him/her in writing to suspend such activity or may take other necessary measures.

■ ARTICLE 18 (RESTRICTION ON EMPLOYMENT OF FOREIGNERS)

- (1) If a foreigner desires to be employed in the Republic of Korea, he/she shall obtain the status of sojourn eligible for employment under the conditions as prescribed by the Presidential Decree.
- (2) No foreigner having the status of sojourn as referred to in paragraph (1) shall work at any place other than the designated working place.
- (3) No person shall employ any person having no status of sojourn as referred to in paragraph (1).
- (4) No person shall mediate or solicit for any employment of a person having no status of sojourn as referred to in paragraph (1).

■ ARTICLE 22 (RESTRICTION ON SCOPE OF ACTIVITY)

If it is deemed necessary for the public peace and order or important national interests of the Republic of Korea, the Minister of Justice may restrict the scope of residence or activities of foreigners, or determine necessary matters to be observed by them.

■ ARTICLE 33-2 (PROHIBITION ON USING FOREIGNER

REGISTRATION CERTIFICATES AS MEANS TO SECURE FULFILLMENT OF OBLIGATION)

- (2) Any person shall be prohibited from committing the act falling under each of the following subparagraphs:
 1. The act of being provided with or coercing any foreigner to provide his passport or foreigner registration certificate for the purpose of

using it as a means to secure a contract for job or the fulfillment of obligation;

■ **ARTICLE 81 (INVESTIGATION OF FOREIGNER STATE OF THINGS BY IMMIGRATION CONTROL OFFICIALS, ETC.)**

(1) In order to investigate whether or not any foreigner sojourns lawfully in accordance with this Act or any order issued under this Act, the immigration control officials or public officials belonging to related agencies as determined by the Presidential Decree may visit the foreigner, the foreigner's employer, representative of the organization to which the foreigner belongs or foreigner's work place, or those who provide the foreigner with accommodation, and to ask them any question or demand them to present other necessary materials.

(2) No person who is asked any question or is demanded to present materials under paragraph (1), shall refuse it without any justifiable reason.

PAY AND DEDUCTIONS

Workers in Korea generally have deductions made from their monthly paychecks. There is a deduction for the National Health Insurance premium, the National Pension Service, and the National Tax Service.

Sadly, withholding fraud is one of the most common types of pay dispute reported by foreign workers in Korea. Some employers will withhold funds from a worker's monthly pay, but not actually deposit the funds where they should go. For example, they may withhold a worker's pension payment, but not actually pay it into his/her pension fund and match it. Or, they may tell a worker that he/she is covered under the National Health Insurance program, when in reality he/she may not be. Fortunately, there are ways to verify this information.

All employers are legally required to complete a Receipt for Wage & Salary Income Taxes Withholding form in February. Ask for a copy of this document. It will have a registered signature stamp. Also, be sure to ask your employer to detail which deductions they are making from your wage and ask to see original documentation detailing your membership to each of the above schemes.

TAXES

As is the case in any country, it is important to be aware of your tax situation while in Korea and to keep abreast of any issues that may arise related to taxation.¹ This is an area that many teachers neglect to consider thoroughly, but taking a few easy steps can help you to avoid future problems. By equipping yourself with some basic knowledge you can avoid the surprise of a smaller paycheck.

You may verify how much money your employer should be withholding for tax purposes online, courtesy of the Korean National Tax Service, here: http://www.nts.go.kr/eng/help/help_52.asp?top_code=H001&sub_code=HS05&ssub_code=HSE2. To verify how much has already been withheld, you may call the NTS foreign help line at 02-397-1440.

¹ For a history of the taxation system in Korea visit:
[http://www.nts.go.kr/eng/data/KoreanTaxation2005\(Part_1\).pdf](http://www.nts.go.kr/eng/data/KoreanTaxation2005(Part_1).pdf).

ARE YOU A RESIDENT OR NON-RESIDENT?

Domicile: the residence where you have your permanent home or principle place of inhabitation and to where, if you decide to leave, you intend to return to in the future.

Resident: A person who has a domicile in Korea, or, someone who has a job that requires them to live in Korea for a year or more. A resident is subject to being taxed from sources within and outside of Korea.

Non-Resident: A person who does not meet the residency criteria above. A non-resident is only subject to income tax on income made within Korea. Most E-2 visa holders fall into this category.

For tax purposes, an individual ceases to be a resident the day following their departure from Korea or on the day when they acquire a domicile in Korea. A non-resident becomes a resident on the last day of the 1-year period of having a place of residence in Korea.

MONTHLY TAX WITHHOLDING

Regardless of whether you are a resident or non-resident, when you receive employment income, your personal income tax is withheld monthly by your employer. That is, an employer paying wage & salary income must deduct income tax monthly from the earnings of their employees based on the "Simplified Tax Withholding Table" issued by National Tax Service (NTS) and the total of these deductions is paid to the local district tax office by the tenth day of the following month.

However, an employer who has no more than ten employees on average from January to December of the preceding year may pay taxes withheld to the government every half-year, after obtaining approval of the district tax office concerned.

FILING YOUR YEAR-END TAX SETTLEMENT

Your wage & salary income tax liability for the year is settled and finalized in February of the next year through a year-end exact tax computation (Year-end Tax Settlement). Then, the total of your monthly withholding (the amount withheld over the entire year) is treated as a credit against the overall amount of tax payable for the tax year.

While it the employer customarily files a year-end tax settlement on your behalf in February of the following year, it is your responsibility to see to it that the tax settlement is actually filed. If it is not, and you file no tax return, you may be held liable. Schools employing teachers illegally may not declare their tax situation correctly, which can affect you. Protect yourself by being aware of the tax year and filing time and ensuring that your employer is able to provide you with the necessary documentation (see below) in the event that you need to file on your own. If your employer withholds this documentation for any reason, you have good grounds to suspect that they are not following correct procedures. You are liable to pay a penalty if you fail to file your own taxes in the event that your employer will not do this on your behalf. Returns must be filed to with the District Tax Office that has jurisdiction over your place of residence.

If you are concerned that your employer is not paying your taxes properly, contact the International Taxation Division of the Korean Tax Office in Seoul at 02-720-4793 or 02-720-4222, the NTS foreign help line at 02-397-1440, the nearest tax office branch, or visit the National Tax Service of Korea online at <http://www.nts.go.kr>.

The latest (2008) English language guide is available online: http://www.nts.go.kr/eng/korean/korean_04.asp?top_code=K001&sub_code=KS04&ssub_code=KSC4.

DOES EVERYONE HAVE TO FILE AN INCOME TAX RETURN?

Residents must file an Income Tax Return annually in May. Alien residents can be exempted from this process if one of the following describes your situation:

- You received only wage and salary earnings from which your income tax was withheld and paid by and through the employer or taxpayers associations.
- You received only retirement income from which your income tax was fully withheld through the employer or taxpayers association.
- You received only interest income from which income tax was fully withheld.
- You received only dividend income from which income tax was fully withheld.
- You received only other income from which income tax was fully withheld.²

The latest (2006) English language guide is available online:
[http://www.nts.go.kr/eng/korean/korean_03.asp?
top_code=K001&sub_code=KS03&ssub_code=KSB3](http://www.nts.go.kr/eng/korean/korean_03.asp?top_code=K001&sub_code=KS03&ssub_code=KSB3).

Documentation needed for filing includes your Alien Registration Card, your Report of Exemption & Deduction Income, and your Receipt for Wage & Salary Income Tax Withholding (obtainable from your employer), and any receipts or documents necessary for calculating the total gross income amount less covered expenses such as medical or moving expenses, or credit card interest paid.

TAX EXEMPTION

Under Article 20 of the Korean Tax Code some non-citizen employees are entitled to an initial two-year tax exemption. The exemption applies to teachers working at government-run or government-designated institutions, including national universities and university-run institutes, those employed through government-run programs (such as the Seoul Metropolitan Office of Education), research centers and other recognized educational institutions. The national tax office should have a list of every such place of employment. Contact them on the number provided below if in doubt. Please note that Canadians are not entitled to this exemption.

Contact the Korean Tax Office in Seoul at 02-720-4793 or 02-720-4222 for more information.

PENSION AND SEVERANCE PAY

As a non-citizen aged between 18 and 59 working and residing in Korea you are covered by the national pension scheme if you are working in a workplace covered by the scheme (see below for the difference between workplace coverage options). It is important to know which pension scheme you are paying into as this will help determine whether or not you can claim severance pay (see page 28).

National Pension Scheme (*Gukmin Yeongeum*) - Most non-citizen English language instructors pay into a pension scheme operated by the National Pension Service and are therefore covered by severance pay law. Under the National Pension Scheme, your employer deducts 4.5% of your salary, matches it and deposits the entire 9% into your pension account each month. You can request a statement which

indicates how much has been deposited to your account, Visit the nearest National Pension Scheme office to request it. You can also call 02-1355 for more information.

Private School Pension (*Sarib Hakgyo Yeongeum*) - Private secondary and higher education institutions may opt to provide pension coverage through a private pension scheme. Unlike the National Pension Scheme, these schemes are operated by insurance companies and private foundations and this may exempt them from severance pay law. Ask your employer to clarify which scheme you are covered by and ask whether or not you are entitled to severance pay. Private school pensions do not follow the deduction and matching system of the National Pension Scheme (4.5% deducted and matched), so be sure to find out how the compensation system works.

LUMP-SUM REFUNDS

A lump-sum refund is a complete refund of your pension premium contributions made into the Korean National Pension Program. As stipulated in the National Pension Act, lump-sum refunds are paid to non-citizens who are nationals of those countries with either reciprocal social security agreements between their country and Korea (refer to Article 126 of the National Pension Act and Article 113 of the Enforcement Decree of the National Pension Act) or nationals from countries that have Social Security Agreements with the Korean government. Here is a basic guide:³

Country	Social Security Agreement	Lump-sum refund	Exempt from NPS contributions
Australia	YES	YES	-
Canada	YES	YES	-
Ireland	YES	NO	-
New Zealand	NO	NO	-
South Africa	NO	NO	YES
UK	YES	NO	-
US	YES	YES	-

3 Based on and information available on the NPS website.

APPLICATION FOR LUMP-SUM REFUND

If you are applying in Korea (before departing the country) you will need a completed application form, your passport, your Alien Registration Card, your bank book, and a plane ticket showing departure from Korea. You will need to visit your local NPS office to carry out this process. See a list of regional offices at http://www.npc.or.kr/apppage/english/contact/contact_01.jsp.

If you are applying after departure from Korea you will need an application form (notarized from a notary agency of the country in which you reside and attested to by the Korean Consulate or Embassy), a copy of your passport, and a copy of your bankbook or other such bank statement showing the account number and bank routing number. When you apply for a lump-sum refund through an agent in Korea, the application must be submitted by post mail.

SEVERANCE PAY

Called *daechigeum* (대치금) in Korean, most instructors are entitled to severance pay, but make sure that you ask your employer (1) to clearly define whether or not you are entitled to it; (2) if not, to explain why; and (3) to show you where this is detailed in your contract. Better to have this conversation before you sign the contract, rather than find out when you go to buy the round-the-world ticket that you have been saving for at the end of your contract and find you can't afford it!

WHAT IS SEVERANCE PAY AND WHO GETS IT?

Severance Pay is basically an extra month of pay paid to an employee by their employer at the completion of a 12-month contract (e.g. if you work one day less than your 12-month contracted period you are no longer entitled to severance pay). This is calculated by adding the income earned over the 3 last months and dividing by 3, excluding any bonuses received. Your employer should pay this to you within 14 days from the end date of your contract. As severance pay is subject to different provisions of the Tax Code it may be hard to work out the exact amount you will receive in advance.

You are not entitled to Severance Pay if you work under 15 hours a week or less than 60 hours per month, if your work for a company that has 5 or fewer employees, or in some cases if your employer pays into a private school pension scheme.

LABOR STANDARDS ACT, ARTICLE 34 (SEVERANCE PAY SYSTEM)

- (1) An employer shall establish a severance pay system whereby an average wage of more than 30 days shall be paid for each year of consecutive years employed as a severance pay to a retired worker; however, if the worker was employed for less than one year, this shall not apply.
- (2) In establishing the severance pay system stipulated in paragraph (1), a differential severance pay system shall not be permitted within one business.
- (3) An employer may, at the request of workers, pay severance pay in advance for the period of continuous employment of the worker concerned by adjusting the balances of remunerations before his retirement, irrespective of the provisions of paragraph (1). In this case, the number of years of continuous employment for the computation of severance pay shall be counted anew from the moment the latest adjustment of balances has been made.
- (4) In cases where an employer has enrolled in pension insurance program for retirees or a retirement lump sum payment trust as prescribed by the Presidential Decree (hereinafter referred to as "pension insurance, etc.") for workers, whereby workers, as the insured or a beneficiary, receive lump sum payment at the time of retirement, or draw their pensions, it shall be deemed that the employer has set up a severance pay scheme in accordance with paragraph (1). The amount of lump sum by the retirement insurance, etc., however, shall not be smaller than that of severance pay pursuant to paragraph (1).⁴

HEALTH INSURANCE

Every person enrolled in the National Health Insurance system is issued a health insurance card, which folds up like a booklet and is about the size of a passport. If your employer has not given you a health insurance card, you may not be covered. Any doctor's office in Korea can verify whether or not you are covered. Just give them your Alien Registration Card number and they can check. Alternately, you can call the National Health Insurance Corporation and verify your enrollment (or complain about not being enrolled). Call 02-390-2000.

WHAT TO DO IF YOU SUSPECT WITHHOLDING FRAUD

If your employer is withholding pay improperly and you are unable to resolve the situation to your satisfaction by speaking with your employer about the issue, you may want to consider legal support.

⁴ English translation from Korea4Expats website at <http://www.korea4expats.com/article-severance-pay-korea.html> (accessed 17/02/09). The website offers a full unofficial English translation of the Labor Standards Act at <http://www.korea4expats.com> under Working & Business.

SEEKING LEGAL SUPPORT

EMPLOYMENT

If a dispute with your employer appears unresolvable, you may seek the help of a *nomusa* (노무사), which is a labor attorney. A labor attorney can help you negotiate a settlement with your employer, or can file a complaint and represent you in a labor hearing. *Nomusa* sometimes work on a contingency basis, only collecting a fee if they recover a settlement for you. Others will ask for a retainer.

Be advised that retaining a labor lawyer and/or filing a complaint with the labor board should be the last option, used when all other methods of dispute resolution have failed, because such activities will sour what remaining relationship you may have with your employer.

The Seoul Global Center can provide you with legal resources and answer questions related to the process of filing a complaint with the relevant authorities.

CRIMINAL/CIVIL

If you require a criminal defense attorney, be prepared to pay a retainer of 5 million won or more. If you are the recipient of a civil lawsuit, do not fear: contrary to popular rumor, you will not be detained in Korea until the suit is resolved, and if a judgment is entered against you, you do not have to stay in Korea until it is paid off. Your embassy and the Seoul Global Center can provide you with a list of attorneys who may be able to assist you.