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## North Korean Nationality Law

In 1963, the Korean Democratic People's Republic promulgated its nationality law prescribing citizenship qualifications; a citizen being one who owes allegiance to the People's Republic and in turn has various rights to reciprocal protection from it.<sup>1</sup>

The nationality law of North Korea consists of a total of ten articles. Despite the limited number of articles, this law contains most of the basic ingredients found in the modern nationality legislation of other nations.

Author's English translation of the Korean text of the Nationality Law of October 9, 1963 which appears in the *Minju Choson* (Democratic Korea), Dated October 10, 1963:

### *Article 1*

The following persons are citizens of the Korean Democratic People's Republic:

1. Koreans and their children who have possessed the Korean citizenship prior to the establishment of the Korean Democratic People's Republic and who have not abandoned their citizenship prior to the date of the promulgation of this Law; and
2. Aliens who have acquired the citizenship of the Korean Democratic People's Republic in a manner prescribed by law.

### *Article 2*

Citizens of the Korean Democratic People's Republic irrespective of their residence shall receive the political and legal protection of the Korean Democratic People's Republic.

### *Article 3*

Citizens of the Korean Democratic People's Republic who reside abroad may freely visit their fatherland – the Korean Democratic People's Republic.

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<sup>1</sup>Rights and duties of North Koreans are prescribed in articles 11 through 31, the Constitution of the Korean Democratic People's Republic, September 9, 1948, as amended October 22, 1962.

*Article 4*

The following persons shall acquire the citizenship of the Korean Democratic People's Republic:

1. A child born of citizens of the Korean Democratic People's Republic;
2. A child born of a citizen of the Korean Democratic People's Republic, and of a citizen of a foreign country (providing that both parents are) residing within the territory of the Korean Democratic People's Republic (at the time of the birth of the child in question).
3. A child found on the territory of the Korean Democratic People's Republic whose parents are unknown.

*Article 5*

The nationality of a child who was born of a citizen of the Korean Democratic People's Republic residing abroad, and of a citizen of the foreign country shall be determined by the agreement of his parents.

*Article 6*

An alien irrespective of his nationality or race, may acquire the citizenship of the Korean Democratic People's Republic upon his application.

*Article 7*

The marriage by a citizen of the Korean Democratic People's Republic with a person who is a non-citizen of the Korean Democratic People's Republic shall not entail any change of citizenship.

*Article 8*

In the event of both parents becoming citizens of the Korean Democratic People's Republic, or both of them ceasing to be such, the citizenship of their children under the age of fourteen years changes correspondingly; The change of the citizenship of their children under the age of eighteen years may take place only with their children's consent.

*Article 9*

In the case of the change of the citizenship of one parent who has the citizenship of the Korean Democratic People's Republic, the citizenship of the children remains unaltered.

*Article 10*

Upon the application of person concerned, the acquisition or release of the citizenship of the Korean Democratic People's Republic shall be determined by the Presidium of the Supreme People's Assembly of the Korean Democratic People's Republic.

A close examination of the final text of this statute reveals that the nationality law of the U.S.S.R. has been consulted.<sup>2</sup> In view of increasing North Korean involvement in affairs having international ramifications, it seems appropriate at this time to present the general framework of the current North Korean citizenship law.

### **Recognition of Citizenship**

Following the pattern set by Russian citizenship legislation, the North Korean counterpart recognizes two categories of persons as citizens of North Korea. They are persons and their children who, prior to the establishment of the Korean Democratic People's Republic, possessed Korean nationality and never abandoned it until the date of the promulgation of the present law; and aliens who are naturalized.<sup>3</sup>

### **Acquisition of Citizenship**

North Korean citizenship is acquired, or conferred, either at birth or after birth.

The principle of *jus sanguinis* governing nationality at birth is adopted. Thus, a person is recognized as a North Korean citizen by virtue of birth when both parents, at the time of his birth, were citizens of North Korea, irrespective of their location at the time of birth.<sup>4</sup> The principles of *jus sanguinis* and *jus soli* are applied when determining the nationality of a child of mixed marriage (one parent a North Korean citizen and the other not) born within the confines of North Korea. Thus, the child in question acquires North Korean citizenship.<sup>5</sup> The principle of *jus soli* is applied to children of unidentified parents, residing in the territory of North Korea. Thus they too, acquire North Korean citizenship.<sup>6</sup>

Naturalization is the acquisition of citizenship after birth and is recognized on behalf of aliens, without racial or nationality discrimination.<sup>7</sup> However, there is no provision in granting North Korean citizenship to an alien domiciled abroad at the time a naturalization petition is filed.<sup>8</sup> An application for naturalization is filed with the Presidium of the Supreme

<sup>2</sup>G. Ginsburgs, *SOVIET CITIZENSHIP LAW* 23-52 (1968).

<sup>3</sup>Art. 1, the Nationality Law of October 9, 1963, the Korean Democratic People's Republic (hereinafter cited as the Law), follows the Soviet legislative pattern. On this point, *see Id.* 24.

<sup>4</sup>Par. 1, art. 3, the Law; Ginsburgs, *supra* Note 2, at 25-27.

<sup>5</sup>Par. 2, art. 3, the Law.

<sup>6</sup>Par. 3, art. 3, the Law.

<sup>7</sup>Art. 6, the Law; Ginsburgs, *supra* Note 2, at 28-29.

<sup>8</sup>This question became a subject of debate in the U.S.S.R. according to Ginsburgs, *supra* note 2, at 28-37.

People's Assembly of the Korean Democratic People's Republic.<sup>9</sup> Although there is no specific time given as a residence requirement in North Korea, there are anticipated barriers to overcome in the application of a naturalization petition as discussed in Soviet context elsewhere.<sup>10</sup>

The voluntary-option principle of citizenship choice by parents of different nationalities, on behalf of their new born child abroad, has been adopted. Thus, the parents mutually decide on their child's nationality. This legal device will certainly eliminate one of many possibilities of potential conflict of nationalities that would attach to any child born of parents having different citizenships.<sup>11</sup>

### Marriage and Citizenship

There is strong consensus in the world community today that neither partner in marriage is legally subservient to the other. This consensus is reflected in a majority of nationality legislation throughout the world, and article 7 of the North Korean citizenship law subscribes to this principle.<sup>12</sup> It prescribes that matrimony by a citizen of North Korea, regardless of sex, with a non-citizen undergoes no change of citizenship.

### Citizenship of Minors as a Result of Nationality Change of Parents

In order to deal with question arising from a nationality change of parents, with specific reference to the adjustment of the citizenship of their minor children, the North Korean citizenship law provides two articles<sup>13</sup> which are similar to those prescribed in the nationality law of the U.S.S.R.<sup>14</sup> The North Korean statute is thus reasonably clear concerning circumstances of the acquisition or loss of North Korean citizenship by

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<sup>9</sup>Art. 10, the Law; as to the function of the Presidium of the Supreme People's Assembly, SEE articles 47-51, the Constitution of the Korean Democratic People's Republic, September 9, 1948, as amended October 22, 1962.

<sup>10</sup>G. Ginsburgs, *supra* note 2, at 36-37; G. Ginsburgs, *Soviet Citizenship Legislation and Statelessness as a Consequence of the Conflict of Nationality Law*, 15 INT. & COMP. L.Q. 1, 45-46 (1966).

<sup>11</sup>Art. 4, the Law, originated from the Soviet law according to G. Ginsburgs, *supra* Note 3, at 26. Communist China has adopted the freedom of nationality option; a principle patterned after that of the Soviet Union according to T. T. Hsia, *Settlement of Dual Nationality Between Communist China and other Countries*, 11 *Osteuropa Recht* 27-38 (1965); I. Sipkov, *Settlement of Dual Nationality in European Communist Countries*, 56 AM. J. INT'L L. 1010, 1018-9 (1962).

<sup>12</sup>G. Ginsburgs, *supra* Note 2 at 43; United Nations, *Laws Concerning Nationality* (1954).

<sup>13</sup>Articles 8 and 9, the Law.

<sup>14</sup>G. Ginsburgs, *supra* Note 2, at 46-50.

both parents: if the children are under 14, they ipso facto share the parents' nationality; if they are under 18 but over 14, they must choose for themselves.<sup>15</sup>

### Loss of Citizenship

Article 10 of the law prescribes that the denaturalization of a North Korean citizen may take place by permission of the Presidium of the Supreme People's Assembly of the Korean Democratic People's Republic. As is also the case in the U.S.S.R., unilateral repudiation of North Korean citizenship by a private citizen, has no juridical effect in North Korea.<sup>16</sup> Thus, release from North Korean citizenship may not take place without the prior consent of the North Korean government. The statute makes no distinction between the method of denaturalization of a citizen living in North Korea and a citizen domiciled abroad. This distinction is made in the counterpart of the U.S.S.R. law.<sup>17</sup>

### Overseas Koreans

Protection of North Korean nationals abroad, and their freedom to visit North Korea, are stated in articles 2 and 3 of the Law respectively. In view of contemporary practice, in capitalist as well as socialist countries, it is safe to say that the legal basis for consideration of private rights of a country's own citizens abroad is no longer their *statutum personale* as has been determined in North Korean legislation.<sup>18</sup>

It seems that these two articles contain political implications and are designed to provide a rational basis for extending North Korean control over Korean residents abroad, especially in Japan.<sup>19</sup> The determination of the legal status of more than a half-million Koreans residing in Japan is a subject of controversy; do they possess the citizenship of South Korea, North Korea or Japan? As part of the conditions for normalization of relations with South Korea, Japan agreed in 1965 to render rights to reside permanently in Japan, to those Koreans who claim allegiance to the Republic of Korea.<sup>20</sup>

<sup>15</sup>*Id.* at 46-50.

<sup>16</sup>*Id.* at 37-43.

<sup>17</sup>*Id.* at 37-43.

<sup>18</sup>K. GRZYBOWSKI, *SOVIET PRIVATE INTERNATIONAL LAW* 119-122 (1965).

<sup>19</sup>The concept of two divided Koreas is evolving in the Japanese courts according to Ikehara, Yamada and Sawaki, *Post-War Studies in Private International Law in Japan*, *Japanese Annual of International Law* (No. 6) 95, 101 (1962); Y. Hayata, *The Lex Patriae of Chinese and Koreans*, *Japanese Annual of International Law* (No. 9) 57-68 (1965).

<sup>20</sup>S. Oda, *The Normalization of Relations Between Japan and the Republic of Korea*, 61 *AM. J. INT'L L.* 35, 48-51 (1967).

## Dual Citizenship

There is no special provision in the North Korean citizenship statute to prescribe the question of dual citizenship. Due to the different legislative policies adopted in enacting the nationality law in various states, the question arises concerning persons who are considered dual citizens of North Korea and of some other state. To deal with this question, the Presidium of the Supreme People's Assembly is empowered to ratify treaties with foreign states.<sup>21</sup> One of instances is a bilateral agreement signed with the U.S.S.R. in 1958 to solve the question of dual nationalities of North Korea and the U.S.S.R. arising under the existing statutes of two states.<sup>22</sup>

As the foregoing outline and analysis has tried to show in comparative perspective, the law itself embodies a number of principles of Soviet legislation on citizenship. However, it will be a different task for North Korean administrators to seek Soviet guidelines in the implementation of their citizenship statute, since there has been no general review of accepted practices in the administration of the nationality law in the U.S.S.R. as yet.<sup>23</sup>

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<sup>21</sup>The Constitution of the Korean Democratic People's Republic, *supra* Note 1, Article 49.

<sup>22</sup>D. Zlatopolsky, *State System of the U.S.S.R.* 168 (1962?).

<sup>23</sup>G. Ginsburgs, *supra* Note 2, at 57-8.