Recent Reform of Korean Family Law
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I. Introduction

On March 2, 2005, the Korean National Assembly finally passed the Korean Family Law Reform Bill. Central to this Reform Act is the abolition of the ‘Head of the Family’ System. This Reform, the subject of this paper, represents a very important, indeed a revolutionary, reform of Korean Family Law.

The Reform was promulgated on March 31, 2005 (Act No. 7427). Some of its provisions came into force on the date of its promulgation, while several others, relating to the preparation of the Personal Registry System, will come into force on January 1, 2008. The main reason for the delay in coming into force was because they require transition periods for the preparation of the Personal Registry System. Until then Korea will maintain the Family Registry System, based on the 'Head of the Family'.

The Korean Civil Code has been in force since January 1, 1960, and it has only been amended three times, including this reform, during all those 45 years. The small number of amendments (the other two were in 1977 and 1990) shows how difficult it is to amend Family Law in Korea!

Below is an overview of the March 2005 Reform of Korean Family Law. First, let us look at the content of this element, which will come into force on January 1, 2008 (No. 1.2.3.4.), and then let me explain the other provisions which came into force on the date of promulgation on March 31, 2005 (No. 5.6.7.8.)

II. Contents of the Reform Act

I will briefly review this reform in order.

1. Abolition of the ‘Head of the Family’ System

A. Three Points of the ‘Head of the Family’ System

The following three points are central to the ‘Head of the Family’ system.

(1) KCC Article 778 [Definition of Head of Family]¹
A person who has succeeded to the family lineage…. shall become the head of the family.

(2) Latter part of KCC Article 781 [Entry into Father’s Family Register]²
A child... shall have the name entered into his or her father's family register.

(3) KCC Article 826, paragraph 3 [Duties of Husband and Wife]³
The wife shall have her name entered in her husband's family register.

On February 3, 2005, after heated discussion, the Korean Constitutional Court decided that these three provisions are incompatible with the Korean

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¹ Korean Civil Code [hereinafter "KCC"] Article 778 [Definition of Head of Family] A person who has succeeded to the family lineage or has set up a branch family, or who has established a new family or has restored a family for any other reason, shall become the head of a family. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

² KCC Article 781 [Entry into Family Register and Surname and Origin of Surname of Child] A child shall succeed his or her father's surname and origin of surname and shall have the name entered into his or her father's family register. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

³ KCC Article 826 [Duties of Husband and Wife] (3) The wife shall have her name entered in her husband's family register. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)
Constitution. That is the Constitutional Court held that these articles violate the fundamental human right of protection of individual dignity and equality of the sexes in marriage as outlined in Articles 36(1) of the Korean Constitution.

The recent Reform Act repealed KCC Articles 778 [Definition of Head of Family], the latter part of KCC Article 781 [Entry into Father’s Family Register] and Para. 3 of KCC Article 826 [Entry into Husband's Family Register]. In addition, the reform revised the former part of KCC Article 781[Surname and Origin of Surname of Child], of which the unconstitutionality had been pending in the Korean Constitutional Court.

Before the reform, only one ‘Head of the Family’ was permitted, and that Head could only be succeeded by a male lineal descendant. If there were

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4 Korean Constitutional Court 2004 HunKa 5 February 3 2005 (2001 Hunka 9, 10; 2001 Hunka 11,12,13,14,15; HunKa 5 (joinder)); see internet http://www.ccourt.go.kr/ccourt_hinformation/precedent.asp
5 Korean Constitution Article 36 (1) Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal.
6 Korean Constitutional Court 2003 Hunka 6; see internet http://www.ccourt.go.kr/ccourt_hinformation/precedent.asp
7 KCC Article 984, item 1. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)
KCC Article 984 [Order of Succession to Family Headship]
With respect to succession to the family headship, it shall be given to a person in the following order:
1. A male who is a lineal descendant of the person to be succeeded;
2. A female lineal descendant who is a member of the family of the person to be succeeded;
3. A wife of the person to be succeeded;
4. A female lineal ascendant who is a member of the family of the person to be succeeded; and
5. A wife of a lineal descendant who is a member of the family of the person to be succeeded
no son, then the daughter could be ‘Head of the Family,’ but she had to relinquish the title on marriage, because her name had to be transferred to her husband's Family Register (KCC Art. 826 paragraph 3). The Korean Constitutional Court ruled that those articles violate the equality of the sexes in marriage.

B. Powers of the 'Head of the Family'

The power of the 'Head of the Family' has been drastically reduced since 1990 when the second Family Law was reformed. However the ‘Head of the Family’ has still powers. Details are as follows:

1. Consent to leave the family (KCC Art. 784 para.2)
   When the remarried wife wants to register her lineal descendants with members of her remarried family, their inclusion shall be subject to the consent of the head of her previous family.

2. Power of Entry into Family Register for Lineal blood Relatives of Head of Family (KCC Art. 785)

3. Power for Family Council:
   a. Power to Apply for Convocation of the Family Council (KCC Art. 966)

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8 KCC Article 984, item 2 ; see footnote 7
9 KCC Article 784 [Entry into Family Register for Wife’s Lineal Descendants Who are not her Husband's Blood Relatives] (1) If a wife has lineal descendants who are not husband's blood relatives, she may, upon the consent of her husband, have their names entered in her husband's family register. (2) If, in the cases mentioned in paragraph (1), the wife's lineal descendants are members of another family, their entry into her husband's register shall be subject to the consent of the head of such family. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

10 KCC Article 785 [Entry into Family Register for Lineal blood Relatives of Head of Family] The head of a family may have the names of its own lineal ascendants or descendants who are not the head of another family, entered into its own family register. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

11 KCC Article 966 [Convocation of Family Council] Family council shall be convoked by the Family Court upon the application of the person
b. Power of Expression of Opinion at Family Council (KCC Art. 968)\(^{12}\)
c. Power to Apply for Court Decision to be Substituted for Decision of Family Council (KCC Art. 969)\(^{13}\)
d. Actions of Demurrer against Decision of Family Council (KCC Art. 972)\(^{14}\)

(4) Power of Extinguishment of Family (KCC Art. 793\(^{15}\); KCC Art. 794\(^{16}\))

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12 **KCC Article 968 [Expression of Opinion at Family Council]**
The person concerned, his or her agent by law, spouse, any lineal blood relatives, head of family, member of family council, the party interested or prosecutor. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

13 **KCC Article 969 [Court Decision to be Substituted for Decision of Family Council]**
If it is impossible for family council to make a decision or family council fails to make a decision, the person who is entitled to demand the convocation of family council may apply to the court for a decision which will substitute for a decision of family council. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, This decision was made on March 2, 2005.)

14 **KCC Article 972 [Decision of Family Council and Actions of Demurrer thereto]**
A person who is entitled to demand the convocation of a family council, may within two months after a decision of family council file an action in the court, to contest such decision. (This article will lose its validity from 1, Jan. 2008 by Act No. 7427dated on March 2, 2005.)

15 **KCC Article 793 [Adoption of Family Head and Extinguishment of Family]**
A person who became the head of a family by establishing a new family or setting up a branch family may extinguish the family in order to be adopted by another family. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

16 **KCC Article 794 [Marriage of Female Head and Extinguishment of Family]**
A female head of a family may extinguish her family in order to
etc.
Currently, the Head of the Family keeps the above listed powers.

The substance of other powers such as duty of support of the ‘Head of a Family’ for family members (KCC old version Art. 797)\(^{17}\) and power of designation of residence for family members (KCC old version Art. 798)\(^{18}\) were repealed at the time of the reform of the Korean Family Law in 1990. Now, these duties as of the ‘Head of the Family’ no longer exist.

Though the power of the 'Head of the Family' has been weakened, as described above, the Head of the Family System itself remains as an institution. The 'Head of the Family' still has some powers, such as compulsory formation of the family (KCC Art. 826 para. 3)\(^{19}\) and succession to the Head of the Family (KCC Art. 984).\(^{20}\) And the system still exercises a strong influence among the supporters of Confucian paternalism as a patriarchal ideology. It has not only a symbolic meaning, but also a considerable influence in civil affairs.

For instance, when a woman marries, she becomes a member of her husband’s family. If she remarries, her children are prohibited from being members of their stepfather's family, even though they live together. These

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\(^{17}\) KCC old version Article 797 [Duty to Support to be Responsibility of the Head of a Family] The head of a family is duty-bound to support the members of his family: repealed in 1990.

\(^{18}\) KCC old version Article 798 [Power of Designation of Place of Residence for Family members by the Family Head] (1) If an adult member of a family sets up a place of residence as against the intention of the family head, the head shall be relieved from his obligation to support the former, until such time as the family member has come back to the place of residence which the head of a family has designated a place of residence for a family member. (2) The place of residence for a family in which the husband or the person in parental authority lives shall be governed by the provisions of Article 826 or 914: repealed in 1990.

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\(^{19}\) see footnote 3

\(^{20}\) see footnote 7
compulsory changes and prohibitions of personal status are having very serious legal effects.

When the Reform is in place, the ‘Head of the Family’ will no longer exist. The Family Register based on ‘Head of the Family’ will be abolished on January 1, 2008, after which each person will be able to have his/her own Personal Register.

After long argument and some fierce controversy, the ‘Head of the Family’ System in Korea - a characteristic hallmark of the patriarchal family system - will now be completely abolished. Its patriarchal character conflicting with the principles of democracy and equality of the sexes will, finally, be eliminated.

C. Reformed Regulations

The Korean Civil Code is based on German Pandecten System. Part IV of the Korean Civil Code covers Family Law. Before the reform, under the title of the Head of Family and Family Members, the Chapter II, Part IV of the Korean Civil Code contained 18 Articles from 778 to 796.

Ms. Lee Kyung-Sook, and another 155 members of the National Assembly, proposed the Reform Bill of the Korean Civil Code on September 9, 2004. This Bill, eliminating all the provisions under Chapter II, Head of Family and Family Members, was not accepted by the National Assembly, and it was substituted by the Ministry of Justice Reform Bill of June 3, 2004. This earlier Bill had included the provisions concerning ‘Scope of Family’, and many people objected violently to its repeal, on the grounds that the new Bill would accelerate the dissolution of the family.

At last the National Assembly passed the Reform Bill of the Korean Civil Code (Family Law) Chapter II 'Scope of Family Members and Surname and Origin of Surname of Child'. This contains only 2 Articles, Article 779: Scope of Family Members and Article 781: Surname and Origin of Surname of Child.

In the Reformed KCC Article 779 the 'Scope of Family' no longer recognizes

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21 KCC Article 790 is repealed in 1990
22 Legislation and Judiciary Committee No. 410
23 Legislation and Judiciary Committee No. 15
the concept of 'Head of the Family'\textsuperscript{24}, and the wife's relatives (i.e. wife's father, mother, brothers and sisters) can now be included within the family, provided they live in the same household.

The following is the Reformed KCC Article 779 [Scope of Family]

Any person who falls under any of the following subparagraphs shall become a member of the family:
1. Spouse; blood relatives and brothers and sisters
2. Spouses of lineal blood relatives; lineal blood relatives of spouses; brothers and sisters of spouses

In case of the paragraph 1, subparagraph 2, the family is limited to those who share accommodation.

Many people however are against the retention of this provision, because this concept of family in the Korean Civil Code has little relevance in practice, and also the provision carries few practical benefits.

This provision will come into force on January 1, 2008. By this provision will occur the transition from the 'Head of Family'-centered Family Registry System to the Personal Registry System.

Next, I will consider the Surname and Origin of Surname of Child (KCC Art. 781).

2. Child can take Mother's Surname

Before the reform, a child had to assume its father's surname and the origin of that surname (former part of KCC Art. 781).\textsuperscript{25} This provision was one of the typical provisions of the patriarchal 'Head of the Family' system.

The issue of unconstitutionality in this former part of the KCC Article 781

\textsuperscript{24} KCC Article 779 [Scope of Family Members] The spouse and blood relative of the head of a family, and the spouses of the blood relative, and any other person who has his or her name entered in the family register in accordance with the provisions of this Act, shall become members of the family. (This article will lose its validity on Jan. 1, 2008 by Act No. 7427, March 2, 2005.)

\textsuperscript{25} see footnote 2
had been pending in the Korean Constitutional Court. However this part of KCC Article 781 was included in the reform of 2005.

The revolutionary reform in 2005 now permits a child to take its mother's surname and the origin of that surname by mutual consent of the parents concerned at the time of their marriage.

The reformed KCC Article 781[Surname and Origin of Surname of Child], which shall enter into force from January 1, 2008 is as follows:

A child shall assume its father's surname and origin of surname. However a child can take its mother's surname and origin of surname, by mutual consent of the parents concerned at the time of their marriage.

When the father is a foreigner, the child may assume the mother's surname and origin of surname.

A child whose father is not known shall assume the mother's surname and origin of surname.

A child whose father and mother are not known shall, with the approval of the court, establish a new surname and origin of surname. If father or mother of a child becomes known after a child has established a new surname and origin of surname, the child shall assume his father’s or mother's surname and origin of surname.

In the case of affiliation of a child born out of wedlock, a child may use the former surname and origin of surname by mutual consent of the parents. If no agreement is made, or if it is impossible to reach an agreement, a child may continue to use the former surname and origin of surname subject to the approval of the court.

3. Change of Surname of a Child

Paragraph 6 of the Reformed KCC Article 781 ruled on the changing of surname and origin of the surname in the best interest of the child. In the case of remarriage, children may now take their mother’s new husband's surname and origin of that surname. Before the reform, change of surname and origin of surname had not been permitted at all. The following is the content of this new article.

Paragraph 6 of the reformed KCC Article 781 which shall enter into force on

26 see footnote 6
January 1, 2008 is as follows:

If the change of surname and origin of surname is required for the welfare of the child, it can be changed at the request of the father, mother or child, upon approval of the court. If the child is minor and its agent by law cannot request change of his/her name, its relatives pursuant to the provision of KCC Article 777 or the public prosecutor can make the request.

4. Establishment of the new Real-Adoption System

The Reform Act introduced a new adoption system under which the surname and origin of that surname of the adopted child can be changed. As adopted children are deemed, in this new system, to be real children of the adoptive parents, the system is called the ‘Real-Adoption System’. In comparison with the general adoption system, this system has two characteristics; one is that the adopted child’s surname can be changed, and the other is that the relationship between adopted child and birth parents can be broken off completely.

The Real-Adoption System, which comes into force on January 1, 2008, will run parallel with the general adoption system. According to KCC Article 878 ruling general adoption an adoption can be effective when a report has been submitted. In the report, an agreement between the parents and agent by law of the adopted child should be included.

Under the general adoption system, the adopted child can inherit family estate from his/her birth parents but cannot change his/her surname and origin of surname. Also, the relationship between the adopted child and the biological

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27 KCC Article 777 [Scope of Relatives]
Legal effect taken by relationship of relatives shall extend to those who fall under any of the following subparagraphs unless this Act or other Acts provide otherwise:
1. Blood relatives within the eighth degree of relationship;
2. Affinity relatives within the fourth degree of relationship; and
3. Spouse.

28 KCC Article 878 [Effectiveness of Adoption]
(1) An adoption becomes effective when a report of adoption, as provided for in the Family Register Act, has been submitted.
(2) The report mentioned in paragraph (1) shall be made in writing with joint signatures of both parties and two adult witnesses.
parents continues: i.e. the adopted child maintains relationship with both birth and adoptive parents.

However, under the reformed Real-Adoption System, a child under 15 years of age is able to change his/her name and origin of surname by mutual consent of the mother and stepfather, when the stepfather wants to adopt the child. They must also obtain permission from the Family Court for this new real-adoption. This regulation is to control any abusive adoption and to protect the child's best interest. The previous relationship of relatives with the child shall be terminated, when the real adoption is confirmed by the Family Court.

The following is a brief sketch of the new Real-Adoption System which comes into force on January 1, 2008 in the Reform Act.

(1) Requisites for Real-Adoption

KCC Article 908-2 [Requisites for Real-Adoption]

Any person who wants the real-adoption of a child, and who satisfies all the requirements of the following subparagraphs, may apply to the Family Court for a real-adoption.

1. When a husband and wife who have been married more than 3 years want to real-adopt a child, he or she shall adopt jointly with his or her spouse. However, this shall not apply if their marriage life is more than 1 year and want to real-adopt another party’s birth child.
2. The real-adopted child should be under fifteen years of age.
3. The birth parents of the real-adopted child should agree to their child's real-adoption. This shall not apply if such agreement cannot be obtained as a result of the loss of his/her parental authority, or death or any other cause.
4. Assent from the agent by law of the adopted child, pursuant to the provision of Article 869.29

For the welfare of the real-adopted child, the Family Court may, taking into consideration the fostering conditions, the motives for the real-adoption, the adoptive parents’ capability for care, and/or any other relevant circumstances dismiss the application as set forth in paragraph (1).

29 KCC Article 869 [Assent to Adoption of Person under Fifteen Years of Age] If the person to be adopted is under fifteen years of age, his agent by law shall assent to the adoption on his behalf.
(2) Effects of Real-Adoption

KCC Article 908-3 [Effects of Real-Adoption] para. 1
The Real-adopted child shall be deemed to be a child born during the marriage of the real-adoptive parents.

The Real-adopted child shall be deemed to be a child born during the marriage of the real-adoptive parents, so the provision of KCC Article 781 [Surname and origin of surname of a child] shall apply to the real-adopted child, and the surname and origin of surname of the real-adopted child can be decided pursuant to KCC Article 781. The alteration of surname and origin of surname is required for the welfare of the child, it may be changed at the request of the real-adoptive father, real-adoptive mother or real-adopted child upon approval of the court.\(^{30}\) The real-adopted child can assume its real-adoptive father's surname and origin of surname.\(^{31}\)

The current general adoption system does not allow any changes of surname except in the case of adoption stipulated by the special law for promotion and procedure of adoption. This special law was established to promote inter-country adoption. A child under 18 years old, seceded from the guardianship of the child welfare institution and adopted by the special law, can assume its adoptive father's surname and the origin of his surname if adoptive parents want.\(^ {32}\)

KCC Article 908-3 [Effects of Real-Adoption] para. 2
The relationship of relatives held before the adoption shall be terminated, when the real-adoption is confirmed by the Family Court, on application pursuant to the provision of Article 908-2 paragraph 1. However, when a person who has a spouse adopts the spouse's birth child, the relationship between the spouse and his/her relatives and the birth child shall continue.

Paragraph 2 of the KCC new version Article 908-3 which describes how the existing relationships of relatives prior to the adoption shall be terminated when the real-adoption is confirmed is an important clause within the legislation on real-adoption, and distinguishes it from the general adoption system in the Korean Family Law. These two adoption systems run side by side.

\(^{30}\) KCC Article new version 781 para. 6; II, 3, p. 9
\(^{31}\) KCC Article new version 781 para. 1; II, 2, p. 9
\(^{32}\) Special law for promotion and procedure of adoption Article 8.
side in the reformed Korean Civil Code.

In the general adoption system, an adoption becomes effective without court order when a report of adoption, as provided for in the Family Register Act, has been submitted (KCC Art. 878). Any person who has attained majority may adopt another as his child (KCC Art. 866). If the child to be adopted is younger than fifteen years old, the consent of his/her agent by law is required for the adoption on his/her behalf (KCC Art. 869). The child of any age to be adopted shall obtain the consent of his/her parents, and if such consent cannot be obtained from the parents, due to death or any other cause, consent of any other lineal ascendants, if any, shall be obtained (KCC Art. 870). If the child to be adopted over fifteen, but has not attained majority having neither parents nor any lineal ascendants, he/she shall obtain the consent of his guardian: Provided, that the permission by Family court shall be obtained upon the consent of guardian (KCC Art. 871).

It is doubtful whether or not it is good for the 'welfare of the child' that the relationship between the adopted child and its birth parents should be entirely broken off. However, when a person who has a spouse adopts the spouse's birth child, the relationship between the spouse and his/her relatives and the birth child shall continue.

33 see footnote 28
34 KCC Article 866[Capacity for Adoption] Any person who has attained majority may adopt another as his child.
35 KCC Article 869 [Assent to Adoption of Person under Fifteen Years of Age] If the person to be adopted is under fifteen years of age, his agent by law shall assent to the adoption on his behalf.
36 KCC Article 870 [Consent to Adoption] (1) The person to be adopted shall obtain the consent of his parents, and if such consent cannot be obtained from the parents due to death or any other cause, consent of any other lineal ascendant, if any, shall be obtained.
37 KCC Article 871[consent to Adoption of Minor] If the person to be adopted has not been attained majority and he has neither parents nor any lineal ascendants, he shall obtain the consent of his guardian: Provided, That the permission by Family court shall be obtained upon the consent of guardian(Amended by Act No. 4199 Jan. 13, 1990)
38 KCC new version Article 908-3, para. 2, proviso
Now let me explain the provisions which came into force on the date of promulgation on March 31, 2005 (No. 5.6.7.8.).

5. Abolition of the Prohibition of Marriage between Parties with Common Surname and Origin of Surname

Before the reform, one of the regrettable effects of the patriarchal family system was embodied in the rule prohibiting marriage between parties whose surname and whose ancestral paternal origin are common. However in practice this provision had already lost its validity when the Korean Constitutional Court declared that it was incompatible with the Constitution in 1997.

The following is a summary of this decision made by the Korean Constitutional Court.

'The legislative purpose of the Marriage Prohibition Clause did not fall under the permissible category of restricting individual human rights for "social order" or "public welfare" prescribed in Article 37 (2) of the Korean

39 KCC old version Article 809 [Prohibition of Marriage between Parties Whose Surname and its Origin are Common] (1) A marriage may not be allowed between blood relatives, if both surname and its origin are common to the parties.


41 Korean Constitution Article 37 (2): The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed no essential aspect of the freedom or right shall be violated.
Constitution. Such prohibition also violated the equal protection clause of the Constitution by discriminating against gender, because it applied only to surnames from the same patrilineal blood. Also, the Marriage Prohibition Clause infringed upon the pursuit of happiness, which includes the freedom to choose one's spouse, and was inconsistent with the right to marry guaranteed by Article 36 (1)\(^{42}\) of the Constitution.\(^{42}\)

After this decision of the Korean Constitutional Court, the Korean Supreme Court laid down the regulation governing the Family Register, which makes it possible to register a marriage between parties whose surname and ancestral paternal origin are common, if it is proved that they are not collateral blood relatives within the eighth degree of relationship.\(^{43}\)

For the past 40 years, feminist and family law academics have waged a nation-wide campaign to have the provision annulled. The majority of family lawyers, as well as the Ministry of Justice, think that this reform of family law is urgently needed, since these rules do not reflect modern life, and, by giving husbands and fathers predominant powers, are rooted in anachronistic paternalism and sexual discrimination. Nevertheless the abrogation of Article 809 of the Korean Civil Code encountered desperate resistance from conservative supporters of Confucianism, among others.\(^{44}\)

The repeal of the provision by parliamentary legislation was not easy, even though it had lost its validity and been emptied of meaning by the decision of the Korean Constitutional Court in 1997. The supporters of Confucian paternalism are against repeal of the only frame remaining text in the Korean Civil Code. Stubborn resistance put up by the followers of the traditional patriarchal family system had to be overcome. However, at last, this provision has now been repealed and the scope of prohibition of marriage

\(^{42}\) see footnote 5


reduced.

The following is the reformed version of prohibition of marriage in the Korean Civil Code.

Korean Civil Code Article 809 [Prohibition of Marriage between Close Relatives]
Marriage may not be allowed between parties whose relationship of blood relative exists within the eighth degree (including the blood relatives for the real-adopted child kept before real-adoption).
Marriage may not be allowed between parties if either of them is or was the spouse of blood relative within the sixth degree of relationship, or if either of them is or was the blood relatives within sixth degree of relationship of the spouse, or if either of them is or was the spouse of blood relatives by affinity within fourth degree of relationship of the spouse.
Marriage may not be allowed between parties whose relationship of blood relative existed within the sixth degree of adoptive parents lineage and within the fourth degree of adoptive parents affinity.

In many countries the prohibited scope of marriage is very narrow, and compared to this world-wide trend, Article 809 of the Korean Civil Code seems still too wide and anachronistic, as well as lacking any rational basis.

Even though this reform is a rather late development, it could be said that it is a historical turning point, away from the patriarchal family system, and towards a family system based on the democratic equality of the sexes. This Reform Article came into force on the date of promulgation on March 31, 2005.

6. Abolition of Period to Prohibit Remarriage

Before the reform, it was not possible for a female to remarry until six months


46 Act No.7427, March 31, 2005.
had elapsed from the day of the termination of her previous marriage. The duration set by the law was to help avoid possible conflicts over presumption of paternity issues. Thanks to the abolition of this provision, a female can now remarry any time she wants after the termination of her previous marriage. This Reform Article came into force on the date of promulgation on March 31, 2005.

7. Change of the Limitation Period on Action of Denial of Paternity

Before the Reform, the old version of Article 847 of the Korean Civil Code read as follows:

Article 847 [Action of Denial of Paternity] (1) An action of denial shall be brought against the child or the mother of parental authority within one year from the day on which the husband became aware of the child's birth.

But the Korean Constitutional Court held in 1997 that the Limitation Period of Article 847 [Action of Denial of Paternity] of the Korean Civil Code is incompatible with the Korean Constitution on the ground that the too short only one year limitation period of action of denial of paternity infringes the fundamental human right: i.e. dignity of person, husband's right to pursue happiness within one's family life as guaranteed by Articles 10, 36(1) of the Korean Constitution.

47 KCC old version Article 811 [Period to Prohibit Remarriage]
A female may not remarry unless six months have elapsed from the day of the termination of her previous marriage: Provided, That if she gives birth after the termination of her previous matrimonial relation, this shall not apply.

48 Act No.7427, March 31, 2005.

49 Korean Constitution Article 10: All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.

50 see footnote 5

51 9-1 Korean Constitutional Court Report pp.193-218. of March 27 1997, 95 HunKa 14, etc. On the Limitation Period of Article 847 of the Korean
Following the decision by the Korean Constitutional Court, the Ministry of Justice drafted the Reform Bill of Article 847 of the Korean Civil Code. The Bill was modified and at last passed the National Assembly on March 2, 2005. It reads as follows:

The Reformed KCC Article 847 [Action of Denial of Paternity] is as follows: (1) The husband or wife may bring an action of denial of paternity against the other party or child within two years from the day when husband or wife became aware of the fact.

After the reform, the limitation period has been lengthened from one year from the day when the husband became aware of the child's birth to two years from the day when the husband or wife became aware of the fact that the child was proved not apparent father’s son. Before the reform, if 1 year has elapsed from the day of the child’s birth, the apparent father could absolutely not bring an action of denial of paternity. But after the reform, the apparent father has 2 years for an action from the day when he became aware of the fact that the child was proved not his son. And only ‘husband’ was qualified to be a plaintiff before the reform, but ‘wife’ is added in the Reform Act for the action of denial of paternity.

8 years have passed since 1997, when the Korean Constitutional Court decided that KCC Article 847 was incompatible with the Korean Constitution. The apparent fathers (husbands) who took legal proceedings in the constitutional litigation were suffering under their unsettled legal status. In addition to this Article 847, the Reform Bill contained Article 809 [Prohibition of Marriage between Parties with Common Surname and Origin of Surname]. The main reason for the delay in the implementation of this reform has been the desperate resistance put up by conservative supporters of Confucianism against reform of the KCC Article 809. At last Korean assembly passed this Reform Bill on March 2, 2005.


This Reform Article came into force on the date of promulgation on March 31, 2005.\textsuperscript{53}

8. Establishment of the Welfare of the Child Clause

The Reform Act introduced the concept of Welfare of the Child. Article 912 of the Korean Civil Code [Standard of Exercise of Parental Authority] has newly established that the first priority should be given to the ‘Welfare of the Child’ when a person exercises his/her parental authority.

With the establishment of this reform, the Korean Civil Code is coming into line with the world-wide tendency to treat the child’s welfare as the first and paramount consideration. Emphasis on the child’s rights and welfare are at the very heart of this reform. In effect, it symbolizes the ending, or at least the weakening, of the patriarchal family system in Korean society.

This Reform Article came into force on the date of promulgation on March 31, 2005.\textsuperscript{54}

III. Conclusion

The 2005 Reform of the Korean Civil Code, which I have outlined in this paper, is a reform of truly revolutionary scope and stature. But it has, I believe, an importance beyond the actual provisions of the Code itself. The reform could well be regarded as a symbolic development of the Korean society toward the democratic open society following the world trend.

Finally, I summarize below some significant issues of the recent reform of Korean Family Law written in my paper.

No. 1.2.3.4. will come into force on January 1, 2008, and No. 5.6.7.8. came into force on the date of promulgation on March 31, 2005.

1. Abolition of the ‘Head of the Family’ System

After long argument and some fierce controversy, the ‘Head of the Family’ System in Korea - a characteristic hallmark of the patriarchal family system - will now be completely abolished. Its patriarchal character conflicting with the principles of democracy and equality of the sexes will, finally, be

\textsuperscript{53} Act No.7427, March 31, 2005.
\textsuperscript{54} Act No.7427, March 31, 2005.
2. Child can take Mother's Surname
A child shall assume its father’s surname and origin of surname (KCC new version Art. 781). However, the Reform Act permits a child to take its mother's surname by mutual consent of the parents concerned at the time of their marriage (KCC new version Art. 781, para. 1, proviso).

3. Change of Surname of a Child
The Reform Act ruled on the changing of surname and origin of the surname in the best interest of the child (KCC new version Art. 781, para. 6). Before the reform, change of surname and origin of surname had not been permitted at all.

4. Establishment of new Real-Adoption System
The Reform Act introduced a new adoption system under which the surname and origin of that surname of the adopted child can be changed. So a real-adopted child can assume its real-adoptive father’s surname and origin of surname. And the relationship between adopted child and birth parents can be broken off completely. However, when a person who has a spouse adopts the spouse's birth child, the relationship between the spouse and his/her relatives and the birth child shall continue (KCC new version Arts. 908-2 ~ 908-8).

5. Abolition of the Prohibition of Marriage between Parties with Common Surname and Origin of Surname
At last, this provision has now been repealed and the scope of prohibition of marriage reduced (KCC new version Art. 809). Stubborn resistance put up by the followers of the traditional patriarchal family system had to be overcome.

6. Abolition of Period to Prohibit Remarriage
Before the reform, it was not possible for a female to remarry until six months had elapsed from the day of the termination of her previous marriage (repealed: KCC Art. 811). After the reform, a female can now remarry any time she wants after the termination of her previous marriage.

7. Change of the Limitation Period on Action of Denial of Paternity
After the reform, the limitation period has been lengthened from one year from the day when the husband became aware of the child’s birth to two years from the day when the husband or wife became aware of the fact that
the child was proved not apparent father’s son. Before the reform, only ‘husband’ was qualified to be a plaintiff, but ‘wife’ is added in the Reform Act for the action of denial of paternity (KCC new version Art. 847 para.1).

8. Establishment of the Child Welfare Clause
The Reform Act has newly established that the first priority should be given to the ‘Welfare of the Child’ when a person exercises his/her parental authority (KCC new version Art. 912). With the establishment of this reform, the Korean Civil Code is coming into line with the world-wide tendency to treat the child’s welfare as the first and paramount consideration.