

**Baker
McKenzie.**

Fighting Domestic Violence

Pro Bono Initiative

Asia



In association with



South Korea

Domestic Violence Legislation



“...victims of domestic violence will have the rights to be respected for human dignity and security...”

South Korea

1 Legal provisions

1.1 What are the relevant statutes and codes?

In South Korea, the prevention of and protection from domestic violence is covered by two main laws, both adopted in 1997 and amended on several occasions (namely in 2011 and 2014):

- Act on the Prevention of Domestic Violence and Protection of Victims ("**Prevention of Violence Act**")
- Act on Special Cases Concerning the Punishment of Crimes of Domestic Violence ("**Special Act for the Punishment of Domestic Violence**")

In that context, the following should be noted:

- There is no stand-alone law addressing violence against women, and laws that cover acts of violence, including domestic violence, sexual assault and harassment, are gender-neutral in the Republic of Korea.
- There is no law addressing honor crimes, and there is no information to suggest that honor crimes are an issue in the country.
- In 2020, the government introduced a Comprehensive Plan to Prevent Domestic Violence, laying out a five-year plan to address violence against women.

Other important regulations on this matter are:

- Framework Act on Prevention of Violence against Women, enacted on 24 December 2018, specifically addresses violence against women (the act mandates the government to formulate comprehensive plans to get rid of violence against women, as well as explicitly providing victims with a right to protection and to be free from secondary victimization, etc.)
- Act on Equal Employment for Both Sexes (amended by Act No. 7564 of 31 May 2005)
- Act on the Protection of Children and Juveniles against Sexual Abuse
- Prohibition of and Remedies for Gender Discrimination Act
- Constitution of South Korea, 1948, as amended in 1987
- Criminal Act, 1975, last amended on 20 October 2020
- Civil Act, 1962 (Law No. 471), last amended on 20 October 2020
- amendments and decrees related to domestic violence as listed by the Korean government's official website: http://www.mogef.go.kr/eng/lw/eng_lw_f003.do

1.2 What is the controlling case law?

It should be noted that South Korea does not have a common law system and few cases reach the highest levels of the Korean legal system (the Supreme Court and constitutional court). However, some points of jurisprudence help clarify different points in the laws:

- An **indecent act** refers to an act that deviates from sexual moral norms causing a victim to feel shame or disgust, and violating the victim's sexual freedom. Whether such a crime is established should be carefully determined by factoring in: the victim's reciprocity, gender and age; relationship between the victim and perpetrator prior to the act; circumstances leading to the act; means and method used to commit the act; objective circumstances; and sexual moral norms at the time. See Supreme Court decision 2015Do6980 (2015).¹
- The Supreme Court (Supreme Court decision 2014Do17346) held that "**judgment competency**" means the ability to rationally discern between what is right and wrong, and "**decision-making capacity**" means the ability to control one's behavior. Whether such abilities are lacking can be determined by factoring in not only an expert's opinion on that issue but also objective evidence, such as testimonies of witnesses on the daily verbal expressions and behaviors of the child or juvenile, and circumstances that led to the charge, including the child or juvenile's speech and behavior. The court held that **even if there may have been implied consent by the victim, such consent could not be viewed as an act of a child or juvenile with sufficient judgment competency** who voluntarily exercised the right to sexual self-determination on an informed or educated basis.
- The Supreme Court (Supreme Court Decision 2009Da19864) (2011) upheld a lower court's decision finding that the Seoul Young Men's Christian Associations (YMCA), a private organization, **violated the Constitution when it excluded women from general membership**. The Supreme Court found sexual discrimination, which excludes women from general membership qualification, to be against "social order exceeding tolerable limits in light of our community's sound common senses and legal sentiment." Accordingly, the Supreme Court found that the YMCA violated the Constitution despite its private organization status.
- Unless it can be proven in the affirmative that the parties **can restore the relationship** and it would not be unbearable for the plaintiff to remain in such a relationship, the lower court should grant the plaintiff's claim for divorce (Supreme Court Decision 2005Meu1689) (2005).
- The Supreme Court (Supreme Court Decision 2005Du13414) (2006) dismissed an appeal by a governor of a province claiming that because he was found not to be violating the Election of Public Officials Act, he should also be found not guilty of sexual harassment charges under the former Prohibition of and Remedies for Gender Discrimination Act. The governor sexually harassed the defendant, a president of a vocation association, at meetings to discuss the upcoming general elections for governor. The Supreme Court held that the plaintiff's sexual behavior at such meetings constituted workplace sexual harassment, **because their meetings had relevance to work**, i.e., meeting to discuss elections for governor.
- In its decision (Supreme Court Decision 2008Da89712) (2009), the Supreme Court affirmed, finding the supervisor and employer liable. Under Article 756 of the Civil Act, **an employer can be held liable for an employee's action** if the act is "**related to the employee's execution of the undertaking (for which he/she is employed)**." Thus, the Supreme Court noted that when an employee injures another intentionally, even if the act is not related to the employee's undertaking of their job responsibilities, employer liability still attaches if the misconduct is "apparently and objectively related"

to the employer's work. Additionally, if an employee commits an intentional act such as sexual misconduct, the court noted that employer liability attaches where the misconduct was objectively related to the execution of the employer's work.

- A recent decision rendered by the Supreme Court has, for the first time, introduced the concept of "**gender sensitivity**" in its findings, followed by similar rulings. (See Supreme Court Decision 2017Du74702, decided 12 April 2018) [Revocation of Decision of the Appeals Commission for Educators] The decision found that "**sexual harassment cases ought to be resolved with gender sensitivity in striving for gender equality and better understanding of gender discrimination issues.**" The ruling is widely viewed as setting out the precedent and criteria for addressing sexual harassment cases from a gender equality perspective, a departure from "male-centered gender stereotype."
- Since the 1970s, the Supreme Court **has rejected the concept of marital rape, "alleging that sex between spouses cannot be rape"** but, since 2006, **there have been several successful convictions of cases of marital rape** of migrant women by Korean spouses.² According to the crime information handbook of the US embassy in Seoul, "spousal and acquaintance rape are crimes, but police and prosecutors have only rarely prosecuted these types of cases."³ In their 2013 report to the UN Human Rights Committee, Korean authorities stated that on 12 February 2009, the Supreme Court of Korea ruled that a **crime of rape** is acknowledged against a defendant who **forced sex with his wife** without her consent on the grounds that the marital relationship between the defendant and victim was legally maintained but already broken in practice.⁴

1.3 What are the specific parts of the court system that address domestic violence?

Domestic violence cases are handled as special cases from the investigation stage to the court procedure.

1.4 What types of proceedings (civil or criminal), submissions or orders can a domestic violence victim use/begin against an abuser?

Potential causes of action include actions in the fields of criminal, civil, administrative and employment law. The Special Act for the Punishment of Domestic Violence stipulates not only ordinary criminal punishment procedures but also protection order procedures for family protection cases, such as limitation on access to family members, probation, therapy and counseling, and custody entrustment.⁵

2 Introduction: framework guiding domestic violence law

2.1 Are there civil and criminal legal remedies for domestic violence victims?

Under the Special Act for the Punishment of Domestic Violence, Chapter II, Section 3 (Protection Orders), Article 40 (Decision, etc., for Protective Disposition), a judge may order a protective disposition that restricts the offender's access to victims or family members in person or through telecommunications, restricts parental authority, order social service or lecture attendance, be placed on probation, entrusted into custody in protective facilities (under the Prevention of Violence Act), or entrusted into medical institutions or counseling centers.

Similarly, under Chapter III (Victim Protection Orders), Article 55-2 (Victim Protection Orders), a judge may issue a victim protection order ruling the removal of the offender from a room with victims or family members, denial of access within 100 meters from the residence or place of work of victims or family members, denial of access to victims or family members through telecommunications, or restriction on the exercise of parental power.

Further, under Chapter V (Penal Provisions), Article 63 (Noncompliance with Protective Disposition, etc.), if a domestic violence offender fails to comply with the protective disposition or a victim protection order or an ad hoc protection order, the offender will be punished with up to two years in prison or a fine of KRW 20 million.

2.2 Is protection from domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Under the Special Act for the Punishment of Domestic Violence, Chapter I (General Provisions), Article 1 (Purpose), the purpose of the act is "to restore the peace and stability of a family destroyed due to crimes of domestic violence, maintain a healthy family environment and protect the human rights of victims and their family members" In addition, Article 1-2 (Basic Idea) of the Prevention of Violence Act, provides that the "victims of domestic violence will have the rights to be respected for human dignity and security by swiftly escaping from the damaging situation."⁶ The provision was newly inserted in December 2017. In this regard, although protection from domestic violence is not expressly provided as a human right in the statutes of Korea, it is generally and implicitly regarded as one type of human right for the purpose of Korean laws.

2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No.210)?

South Korea does not appear to be invited to sign as a nonmember of the Council of Europe.⁷

2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

N/A

2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

Not at this time.

2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

South Korea has ratified the 1979 Convention.⁸ Under the recently amended Special Act for the Punishment of Domestic Violence (amended on 20 October 2020),⁹ domestic violence crimes now include home invasion, noncompliance with eviction and crimes of illegal filming. A number of other protective and preventive measures were introduced, including the possibility of attaching orders to the perpetrators to complete domestic violence treatment programs in court sentences. South Korea has been criticized by the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) for focusing on maintaining the integrity of the family rather than protecting victims, as evidenced by Article 1 of the act,¹⁰ as well as not defining in statutory law the concept of marital rape.¹¹ The CEDAW recommended:

extending the [Act's] applicability to same-sex couples or families and all women, regardless of their sexual orientation or gender identity; abolish the system of suspending charges in home protection cases on condition of undergoing counselling or training on domestic violence, and prohibit the use of reconciliation and mediation in such cases; ensure that perpetrators are criminally punished under statutory sanctions; and adopt a policy of mandatory arrest for crimes of domestic violence in cases in which restraining orders are breached

To date, Korea has not fully addressed the criticism and the recommendations of the CEDAW in its amendment of relevant laws.

2.7 If the 1979 Convention has not ratified or signed, is it envisaged that your country will do so?

N/A

3 Similarities and differences in terminology

Under the Special Act for the Punishment of Domestic Violence, Chapter I (General Provisions), Article 2 (Definitions) the following terms are defined:

Term	Definition
Domestic violence	Means activities involving physical or psychological harm or damage to property among family members.
Stalking	Means any person who requests to meet or date by consistently attempting to approach any third person, or watches, follows or secretly waits for any third person against the explicit will of the person. ¹²
Sexual harassment	Means a case in which any employee, employer or worker of a government agency, local government, public organization, etc.: (i) makes the other party feel sexual humiliation or repulsion with verbal or physical behavior of a sexual nature or demands by utilizing his/her position or in relation to his/her duties; and (ii) expresses one's intention to put the other party at a disadvantage for not complying with any verbal or physical behavior of a sexual nature or demand or to grant him/her any benefit on the condition of complying therewith. ¹³
Victim	Means a person who suffers direct damage from a crime of domestic violence.
Abuser/"domestic violence offender"	Means a person who commits a crime of domestic violence and a co-offender who is his/her family member.
Civil protection order	<p>If deemed necessary for the protection of a victim, a judge may issue any of the following victim protection orders against a domestic violence offender by ruling, at the request of a victim or legal representative thereof:</p> <ol style="list-style-type: none"> 1. evacuation, etc., from a room, in which victims or family members live, or a room occupied thereby, to isolate the offender from the victims 2. denial of access within 100 meters from the residences or places of work of victims or family members 3. denial of access to victims or family members through telecommunications under subparagraph 1 of Article 2 of the Framework Act on Telecommunications 4. restriction on the exercise of parental power against a domestic violence offender in parental power <p>See Special Act for the Punishment of Domestic Violence, Chapter II, Section 3 (Protection Orders).</p>
Causes of action	N/A

Term	Definition
Marital rape	<p>Spousal rape is not criminalized in the Republic of Korea.¹⁴ However, Country Reports for 2008 notes that while spousal rape is not illegal, "courts have established a precedent by prosecuting spouses in such cases."¹⁵ In June 2007, in its response to CEDAW, the Republic of Korea indicated that marital rape cases might "follow a different path in the future" due to precedents set in earlier cases.¹⁶</p> <p>In January 2009, according to The Korea Times, a husband was convicted of raping his wife and was given a 30-month suspended sentence in Busan District Court.¹⁷ The offender had "frequently" raped his wife while threatening her with weapons. According to The Korea Times, the ruling was the first time a South Korean court had recognized marital rape as a crime.</p> <p>In May 2013, according to The Korea JoongAng Daily, the Supreme Court of Korea upheld a high court conviction against a man for three counts of spousal rape.¹⁸ The ruling also set a precedent that an offender's legally married wife is included in the definition of "female" in a rape charge, as provided by Article 297 of the Criminal Act. (ibid.) The ruling marked the first conviction for rape between a husband and wife who stayed in the marriage throughout the legal process.¹⁹</p>

3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Term	Definition
Home protection case	Means a case subject to a protective disposition under this act due to a crime of domestic violence.
Protective disposition	Means the disposition under Article 40 against an offender, which is taken after the court examines home protection cases.
Victim protection order case	Means a case subject to a victim protection order under Article 55-2 due to a crime of domestic violence.
Digital sex crime, stalking and dating violence	Is a developing area of law related to cyberstalking.
Child abuse	Means doing harm to a child's health or welfare or committing physical, mental or sexual violence, or cruel acts that are likely to impede normal growth of a child by adults, including the child's protector, and abandoning or neglecting a child by his/her protector.

4 Protection for domestic violence victims and relief granted

4.1 Civil protection orders

4.1.1 Are there civil protection orders available to victims of domestic abuse?

Civil protection orders for victims of domestic violence are provided for in Chapter III of the 1997 Special Act for the Punishment of Domestic Violence. The family court may issue civil protection orders, having jurisdiction over the place for activities, residence or current place of a domestic violence offender and residence or current place of a victim; where no family court is established, the local court of the relevant region will have jurisdiction. Moreover, Article 55-2 sets out the types of civil protection orders that a judge may issue.

4.1.2 Who can petition for civil protection orders?

A judge may issue civil protection orders against a domestic violence offender at the request of a victim or legal representative. As defined in Article 2 of the Special Act for the Punishment of Domestic Violence, the term "victim" means a person who suffers direct damage from a crime of domestic violence (listed in Article 2.3).

4.1.3 Are there temporary custody of a child or child support orders?

The Prevention of Violence Act defines a "child" as a person who is under 18 years of age. Under the Prevention of Violence Act, child victims of domestic violence may be accommodated in shelters, which also offer therapy programs upon request of the victim(s) or their family. In addition, the Special Act on Punishment of Domestic Violence allows the judge to send victims to other parental guardians or relatives (see Article 40). Other laws having provisions for protecting children from violence include The Child Welfare Act, the Youth Protection Act and the Act on Protection of Youth from Sexual Exploitation. The Criminal Code also provides special protections for children in some cases of violence.

4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Article 55-2 of the Special Act for the Punishment of Domestic Violence stipulates that one type of civil protection order that a judge may issue against a domestic violence offender is the denial of access within 100 meters from the residences or places of work of victims or family members. In addition, Article 29 provides for ad hoc measures to be issued by the court to a domestic violence offender for the purpose of the smooth investigation and examination of a home protection case or for the protection of a victim, the denial of access within 100 meters from the residences or place of work of victims or family members. It should also be stated that Articles 5 and 8-2 grant judicial police officers the authority to impose a temporary separation of victims (as prescribed in Article 29) due to its urgency (see Section 5.1 on police procedures).

4.1.5 Are there any other types of emergency, preventive and civil protection orders?

As stated before, Articles 29 and 55-4 prescribe ad hoc measures (a provisional order) to be issued *ex officio* or at the victim's request when there is a danger of domestic violence recurring and an immediate need for protection. Furthermore, Article 8-2 states that a judicial police officer may take any measure prescribed in Article 29, as an urgent ad hoc measure, when a crime of

domestic violence is likely to reoccur and it is impossible to receive an ad hoc measure determined by a court due to its urgency.

Other measures, beyond the separation ones already mentioned, that are foreseen in Articles 29, 55-4 and 8-2 include:

- evacuation, etc., from a room, in which victims or family members live, or a room occupied thereby, to isolate the offender from the victims
- denial of access to victims or family members through telecommunications
- committing the offender to medical institutions or intermediate care centers
- confining the offender in a detention center or room of any state police station

4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Article 6 of the Special Act for the Punishment of Domestic Violence allows victims or their legal agents to file for a victim protection order. When the legal representative of the victim is an offender (e.g., children's cases) or he/she commits a crime of domestic violence in collaboration with the domestic violence offender, a relative of the victim may file a complaint. Furthermore, the indirect victim (e.g., the children) may file a complaint when the domestic violence offender is a lineal ascendant of the victim.

4.1.7 Are their different types of civil protection orders, e.g., short-term period?

Yes. See answer to question (j).

4.1.8 Are *ex parte* orders permitted without the aggressor being present?

Yes. The domestic violence offender's presence in court is only provided for when a judge is deciding whether to take measures under Article 29 of the Special Act for the Punishment of Domestic Violence. Notwithstanding the above, Article 24 prescribes that a judge may summon domestic violence offenders to appear on a designated date, when deemed necessary for investigations and examinations.

4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes. Articles 29, 40 and 55-2 of the Special Act for the Punishment of Domestic Violence explicitly mention "family members" as subjects to be protected through the measures listed in the aforementioned articles.

4.1.10 How long do the orders last?

On the one hand, Article 55-3 of the Special Act for the Punishment of Domestic Violence states that the period of victim protection orders under Article 55-2 will not exceed six months. Exceptionally, the period may be extended by two months, *ex officio*, or by ruling on the request of a victim's legal representative. Article 55-3 also limits the overall civil protection order period, such that it cannot exceed two years by extension. On the other hand, measures prescribed in Article 29 (ad hoc measures) will not exceed two months (evacuation and denial of access measures) and one month (confining in detention center or committing to medical institutions measures). Finally, protection orders provided for in Article 40 will have a six-month maximum period (Article 41).

4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

The US Department of State's Country Reports on Human Rights Practices indicate that in 2008, "the [Ministry of Justice] registered 11,048 cases of domestic violence and prosecuted 1,747 cases."²⁰

According to information provided by the government of Korea to the UN Committee on Economic, Social and Cultural Rights in August 2009, the prosecution indicted 1,841 individuals for domestic violence crimes and requested the court for protective dispositions on a total of 4,833 individuals in 2008. The total number of those referred to the court procedure for domestic violence crimes was 6,674, accounting for 50% of all suspects of domestic violence.²¹

The NGO Korean Women's Association United (KWAU) is a network of several women's groups that works to protect women's human rights and eliminate all violence toward them. The KWAU has issued some reviews on domestic violence in Korea.²²

4.2 Steps for receiving a protective order

4.2.1 What documentation is needed to obtain a civil protection order?

This is not specified either in the Special Act for the Punishment of Domestic Violence or in the Prevention of Violence Act. The answer probably requires a remission to the Civil Procedure Act.

4.2.2 Does the victim need to attend a hearing?

According to Article 24 of the Special Act for the Punishment of Domestic Violence, victims and family members may only be summoned to appear in court when deemed necessary for investigations and examinations.

4.2.3 Can you request remedies?

Yes. See section 4.4.

4.2.4 Are there time limits?

Not specified either in the Special Act for the Punishment of Domestic Violence nor in the Prevention of Violence Act. The answer probably requires a remission to the Civil Procedure Act.

4.2.5 Are there different rules in emergencies?

When a request for a victim protective order is made, the judge may determine whether to issue an ad hoc protective order, if deemed necessary for the protection of the victim.²³

4.3 Judicial discretion

4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The Special Act for the Punishment of Domestic Violence allows the judge broad discretion in deciding on the granting of orders. The above can be inferred from the expressions found in the wording of the following articles:

- Article 29: "when deemed necessary for the smooth investigation and examination of a home protection case or for the protection of a victim"
- Article 40: "when deemed necessary"
- Article 55-2: "if deemed necessary for the protection of a victim"

4.3.2 Are there age limits on who can obtain orders?

This is not specified either in the Special Act for the Punishment of Domestic Violence nor in the Prevention of Violence Act. The answer probably requires a remission to the Civil Procedure Act. In this sense, it should be noted that Article 5 of the said act stipulates as a general rule that in order for a minor (person under 19 years old according to Article 4) to perform any juristic act, he/she must obtain the consent of his/her legal representative. However, within the meaning of the exception provided for in said article, it could be argued that a civil protection order or a protective order can be considered as a legal act the sole purpose of which is the acquisition of rights, in which case the child could act without intermediaries.

We should also point out that Article 55 of the Civil Procedure Act sets a limited litigation capacity for minors, thereby only permitting them to conduct litigation through legal representatives.

4.4 Restitution and remedies available to victims

4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Article 56 of the Special Act for the Punishment of Domestic Violence recognizes the right of victims to apply under Article 57 for a compensation order to the court of first instance, in which the home protection case is pending. In this regard, Article 57 states that the court may issue an order to pay or compensate with cash either *ex officio* or upon request of a victim, when it issues a protection order in proceedings for examining home protection cases at first instance. The grounds for the compensation are as follows:

- (i) cash necessary for the support of victims or family members
- (ii) compensation of material damage directly incurred in a home protection case and the loss of treatment expenses

4.4.2 Can they recover wages and profits lost?

Yes. We understand that "compensation for material damage" is a broad concept including recovery of wages and profits lost (see previous response).

4.4.3 Is a separate civil process required?

Apparently, there is no separate civil process required. According to Article 58 of the Special Act for the Punishment of Domestic Violence, any compensation order will be issued **simultaneously**, when a decision of a protection order is made. In addition, Articles 213 (3), 215, 500 and 501 of the Civil Procedure Act will apply *mutatis mutandis*.

5 Prosecutorial considerations

5.1 Police procedures

5.1.1 When do the police get involved in domestic disputes or legal actions?

Under the Special Act for the Punishment of Domestic Violence (Articles 5 and 8-2), a judicial police officer can act, and thus take measures, in the following circumstances:

- Upon receipt of a report on any of the ongoing crimes of domestic violence, the judicial police officer will arrive at the scene of the crime, without delay, and take the necessary measures (Article 5).
- Notwithstanding the emergency measures aforementioned, when a crime of domestic violence is likely to reoccur and it is impossible to receive an ad hoc measure determined by a court due to its urgency, a judicial police officer may take any measure prescribed in Article 29, either *ex officio* or upon the request of a victim or the victim's legal representative. In this sense, when a judicial police officer takes an urgent ad hoc measure, they will prepare the written decision of an urgent ad hoc measure promptly and make a request to a prosecutor, and the prosecutor in receipt of the request will make an ad hoc measure request to a court. In such cases, the ad hoc measure request will be made within 48 hours from when the urgent ad hoc measure was taken.

5.1.2 What circumstances affect law firm involvement?

On the one hand, Article 8 of the Special Act for the Punishment of Domestic Violence provides that the victim's legal representatives may request a prosecutor or judicial public officer to make a request for ad hoc measures, file such application or present their opinions thereon in the situations listed in the aforementioned article: (i) when a prosecutor deems that a crime of domestic violence is likely to reoccur or (ii) when a prosecutor deems that a domestic violence offender is likely to recommit a crime of domestic violence.

On the other hand, Article 28 provides that when an offender intends to appoint a person, other than an attorney-at-law, as an assistant, the offender will obtain leave of the court. No assistant, other than an attorney-at-law, will receive or promise to receive money or other benefits, and allow or promise to allow a third party to offer such benefits. Moreover, when a domestic violence offender falls under any of the subparagraphs of Article 33 (1) of the Criminal Procedure Act, the court may appoint an attorney-at-law as an assistant of the offender *ex officio*.

In addition, after the court executes a warrant to accompany or issues a civil protection order, it will notify the legal representative or assistant of a domestic violence offender of such fact, without delay (Articles 8 and 29.4), so that the legal representative or assistant thereof may request to revoke a decision to adopt the civil protection orders or change the type of such measures.

5.2 Standard of proof

5.2.1 Is proof required by any legal means?

Yes, proof is required as per any other procedure (see Civil Procedure Act and Criminal Procedure Act: nothing foreseen in Special Acts).

5.2.2 Are there any requirements regarding evidence and documents?

Requirements for the filing of proof, such as documents, are the same as per any other procedure.

5.2.3 Is proof "beyond a reasonable doubt" required?

Yes. If guilt has not been proved beyond a reasonable doubt, the court declares the accused not guilty.

5.2.4 Is the standard of proof different for ex parte orders?

No explicit provisions or case law exist on the standard of proof for *ex parte* orders. Therefore, standard of proof will essentially be the same as in cases of main civil or criminal litigations.

5.3 Affirmative defenses

5.3.1 Are affirmative defenses available to the accused?

Korean law, under the Criminal Act, recognizes the general criminal affirmative defenses such as criminal minors (Article 9), persons with mental disorders (Article 10), deaf-mutes (Article 11), self-defense (Article 21), justifiable act (Article 20), necessity (Article 22) or consent of victim (Article 24).

5.3.2 Is willful intent required?

Yes. Unless explicitly provided otherwise by the Criminal Act, acts without criminal intent are not punishable (Article 13 of the Criminal Act). Crimes of domestic violence do not constitute crimes that are punishable without criminal intent (Article 2 of the Special Act for the Punishment of Domestic Violence).

5.3.3 Are false accusations punishable for the victim?

In general, a person who defames another by publicly alleging facts will be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding KRW 5 million (Article 307.1 of the Criminal Act). A person who defames another by publicly alleging falsehoods will be punished by imprisonment for not more than five years, suspension of qualifications for not more than 10 years, or a fine not exceeding KRW 10 million won (Article 307.2 of the Criminal Act). There is no specific punishment for gender-based violence cases.

5.3.4 How is consent discussed in the law?

Criminal intent are acts performed through ignorance of the facts that comprise the constituent elements of a crime and will not be punishable, except as otherwise provided by the act (Article 13 of the Criminal Act). An act that infringes a legal interest with the consent of a person who is authorized to dispose of such interest will not be punishable except as otherwise provided by the act (Article 24, Criminal Act). Consent will not be established if made by a person who is legally not entitled to dispose of the interests violated by the criminal act, or if the consent is in breach of public policy (Constitutional Court Decision, 10 December 1985, 85Do1892). Notably, Article 305 (Sexual Intercourse or Indecent Acts with Minor) of the Criminal Act, which falls under the scope of the Special Act for the Punishment of Domestic Violence (Article 2), does not accept consent of the victim as a defense (Supreme Court Decision, 12 October 1982, 82Do2183). In other cases involving crimes against minors, courts tend to narrowly accept a defense of consent of the victims (for example, Supreme Court Decision, 27 August 2020, 2015Do9436).

5.3.5 Is self-defense or insanity a defense?

Yes. Self-defense is a defense under Article 21 of the Criminal Act. Korean law states that if a person performs an act in order to prevent impending and unjust infringement of one's own or another person's legal interest, they will not be punished if there are reasonable grounds for that act. However, when a preventive act has exceeded normal limits, the punishment may be mitigated or remitted according to the extenuating circumstances. Additionally, an act performed through fear, surprise, excitement or confusion in the night or under other extraordinary circumstances will not be punishable. Additionally, punishment will be mitigated for persons with mental disorders. Article 10 of the Criminal Act states:

1. The act of a person who, because of mental disorder, is unable to make discriminations or to control one's will, shall not be punished.
2. For the conduct of a person who, because of mental disorder, is deficient in the abilities mentioned in the preceding paragraph, the punishment shall be mitigated.
3. The provisions of the preceding two paragraphs shall not apply to the act of one who, in anticipation of danger of a crime, has intentionally incurred one's mental disorder.

5.4 Witness status

5.4.1 What is a witness's duty to testify honestly and completely?

Article 32 of the Civil Procedure Act (Nondisclosure of Examination) stipulates that victims or family members summoned as witnesses may request the judge not to disclose the examination of a witness on the grounds of privacy protection or the peace and stability in the home. In such cases, the judge may determine on the methods and places of witness examination, including whether to permit such nondisclosure or examination in places, other than open courts. Notwithstanding the above, we should also note that the presiding judge will have a witness take an oath prior to an examination (Article 319 of the Civil Procedure Act) and that perjury is punished under Korean Criminal Law (see Article 152 of the Criminal Act).

5.4.2 Who may abstain from testifying in certain situations?

Article 24 of the Special Act for the Punishment of Domestic Violence stipulates that a judge may summon witnesses to appear on a designated date, when deemed necessary for investigations and examinations.

However, both Articles 314 and 315 of the Korean Civil Procedure Act recognize some privileges, allowing for a witness to refuse to testify on grounds of self-incrimination or incrimination of his or her relatives, as well as providing for solicitor-client privilege, public interest privilege, spousal (marital) privilege, medical professional privilege and clergy-penitent privilege.

5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

See response in previous section.

5.4.4 Are there any laws that provide special protections to children who are testifying in domestic violence proceedings?

Under Article 21 of the Child Welfare Act:

1. In the process of a trial in the court, any of lawyers, legal representatives, lineal relatives, siblings and counselors of a specialized child protection agency may become an **assistant in the inquiry into an abused child case**: Provided, that a person other than lawyers shall obtain permission therefor from the court.
2. The court may, in the case of **questioning an abused child as a witness**, permit a **person trusted by the abused child to sit with him/her**, if any application for it is filed by a public prosecutor, the abused child and his/her protector, or a specialized child protection agency.
3. Paragraphs (1) and (2) shall also apply where a criminal investigation agency examines an abused child

5.4.5 Can children be called upon to testify?

Yes. Under Article 28 of the Act on Protection of Children and Youth against Sex Offenses, in examining a victim of a sex offense against a child or juvenile as a witness, **the court will require a person who is in a fiduciary relationship with the victim to sit with the victim**, if requested by the prosecutor, victim or his/her legal representative, unless any extenuating circumstance exists, such as concern about the disruption of the trial.

5.4.6 What is the effect of a child victim on the charges against the offender?

The effect is neutral. In other words, even if a child victim is called upon to testify as a witness, the effect of testimony will legally and theoretically be same as that of an adult witness.

5.5 Penalties and sentencing; penalty enhancements

5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

With regard to possible criminal liability, a domestic violence offender must be considered as likely to commit a number of offenses listed in Article 2.3 of the Punishment Act. The latter are currently regulated in the Criminal Act.

Under the acts, domestic violence can include any, or a combination, of the following forms: (i) **mental abuse** (including intimidation, defamation, coercion, abandonment and maltreatment); (ii) **physical violence** (including bodily injury, false arrest and confinement); (iii) **sexual violence** (including involuntary sexual contact of any kind and rape); and (iv) **economic violence**, such as extortion and property damage.²⁴ Under the Criminal Act, these are all separate offenses with differing degrees of punishment, due to the fact that a wide range of circumstances (age, offender's relationship to the victim, motive for the commission of the crime and circumstances after the commission of the crime) have to be taken into consideration in determining the punishment (see Article 51 of the Criminal Act).

This being said, the aggravated penalties prescribed for each form of domestic violence offenses (that is to say, those offenses committed against blood relatives, spouse or person under supervision) are as follows:²⁵

(i) Mental abuse:

- **Intimidation (Article 283 of the Criminal Act):** imprisonment for not more than seven years, a fine of not more than KRW 5 million, detention or a fine not exceeding KRW 7 million are the prescribed punishment in this case.
- **Coercion/obstruction (Article 324):** punished by imprisonment for not more than five years or by a fine not exceeding KRW 30 million. Nevertheless, punishment will be remitted when this offense is committed against lineal blood relatives of the offender, the spouse, relatives living together, family members living together or their spouses.
- **Abandonment (Article 271):** punished by imprisonment for not more than 10 years, or a fine not exceeding KRW 15 million. Moreover, when the offense is committed by parents or grandparents against a baby, imprisonment for not more than two years or a fine are prescribed.
- **Maltreatment (cruelty to another under one's protection, to lineal ascendant or spouse) (Article 273):** punished by imprisonment for not more than five years or by a fine not exceeding KRW 7 million.

(ii) Physical violence:

- **False arrest/illegal confinement (Article 276):** punished by limited imprisonment for not more than 10 years, or a fine not exceeding KRW 15 million.
- **Death or injury caused by arrest, confinement, etc. (Article 281):** if an injury is perpetrated, punishment prescribed is imprisonment for a limited term of at least two years, whereas when it results in death, the penalty prescribed is imprisonment for life or for at least five years.

(iii) Sexual violence:

- **Rape (Article 297):** punished by a minimum imprisonment of at least three years. The offense is considered doubly aggravated if a person who, by means of violence or intimidation, inserts his/her sexual organ, finger or any instrument into another's bodily part (excluding a genital organ), thus imprisonment is extended by at least two additional years.
- **Injury or death caused by rape (Article 301):** punished by imprisonment for life or for at least five years (minor injury).
- **Sexual intercourse with a minor (Article 302):** punished by imprisonment for not more than five years.

(iv) Economic violence

- **Extorsion (Article 350):** punished by imprisonment for not more than 10 years or by a fine not exceeding KRW 20 million.
- **Property damage (Article 366):** punished by imprisonment for not more than three years or by a fine not exceeding KRW 7 million.

5.5.2 Are there criminal penalties?

Yes, see previous section.

5.5.3 What is the result of a violation of an existing order for protection?

Noncompliance with domestic violence restraining orders (civil protection order and ad hoc measures) may result in a maximum sentence of two years in prison and a fine of up to KRW 20 million or will be subject to penal detention (Article 63 of the Special Act for the Punishment of Domestic Violence); additionally, if there is a continued failure to comply, the offender will be punished by imprisonment for not more than three years or by a fine not exceeding KRW 30 million.

5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

With regard to domestic violence offenders, authorities may also place them on probation, order them to see court-designated counsellors, as well as impose fines on them.

5.6 Post-release restrictions

5.6.1 Does the law notify the victim of the offender's release from custody?

Yes. Article 8(2) of the Crime Victim Protection Act and Article 10 of the Enforcement Decree of the Crime Victim Protection Act provide for the nation's duty to notify the victim of information regarding criminal proceedings, if the victim so requests. An offender's release from custody is included in the scope of information which the victim may request.

6 Special issues

6.1 Battered woman syndrome

- 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)**

There is limited case law accepting feeble-mindedness or post-traumatic stress disorder (PTSD) due to extended and continuous domestic violence and abuse as a defense under Article 10 of the Criminal Act (Daejeon District Court Decision, 18 October 2006, 2006KoHap102, Seoul High Court Decision, 18 March 2005, 2004No2819, etc.).

6.2 Domestic violence in the workplace

- 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?**

N/A

- 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?**

N/A

- 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?**

There are no specific laws providing for additional protection for employees or their family members for reasons of domestic violence.

6.3 Immigration

- 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?**

N/A

- 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?**

N/A

- 6.3.3 Does domestic violence law discuss asylum accessibility?**

Article 6 of the Nationality Act (Requirements for Simple Naturalization), allows foreigners whose marriage with a Korean spouse has broken down to apply for naturalization. This was created

due to the requirement that foreigners' naturalization qualifications were dependent on their Korean spouse's sponsorship and applies even in cases where the breakup was caused by the Korean spouse.

The Justice Ministry has said in a legislative notice that a new amendment to South Korea's Immigration Control Law will ban a South Korean citizen with a record of domestic violence, irrespective of when it took place, from inviting foreigners to the country for marriage.

6.4 Armed forces

6.4.1 Can a victim seek a military protective order if the abuser is in active military?

Korean jurisprudence does not provide for military protective orders in relation to domestic violence crimes.

6.5 Child custody and child/spousal support

6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Please see section 6.5.2.

6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Yes. Article 15 (Protective Measures) of Korea's [Child Welfare Act](#) establishes the obligation for competent authorities to adopt the protective measures (i.e., mayor, governor or the head of a si, gun or gu) to respect the opinion of the child subject to protection, and hear the opinion of the protector of such child other than the child abuser.

6.6 Housing rights of domestic violence victims

6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No.

6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

No.

6.6.3 Can an order exclude the abuser from the residence?

N/A

6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

There are no additional housing rights in Korean jurisprudence for victims of domestic violence.

Endnotes

- ¹ https://www.law.cornell.edu/women-and-justice/court/supreme_court_of_south_korea
- ² Heo and Rakowski 2014, page 597.
- ³ US, 12 August 2014, page 13.
- ⁴ Republic of Korea, 4 November 2013, paragraph 93
- ⁵ Korea, Republic of, 28 August 2009, "Implementation of the International Covenant on Economic, Social and Cultural Rights." Consideration of Reports Submitted by States Parties in Accordance with Article 16 of the International Covenant on Economic, Social and Cultural Rights. Replies by the Government of the Republic of Korea to the List of Issues (E/C.12/Kor/Q/3) to be Taken Up in Connection with the Consideration of the Third Periodic Report of the Republic of Korea (E/C.12/KOR/Q/3/Add.1).
- ⁶ <https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=202908&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>
- ⁷ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>
- ⁸ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#53
- ⁹ Although the English translation of the act amended on in October 2020 is not yet available, the original text (in Korean) can be found at: <https://www.law.go.kr/LSW/lsInfoP.do?efYd=20171031&lsiSeq=198472#0000>.
- ¹⁰ "The purpose of this Act is to help restore the peace and stability of a family destroyed by criminal domestic violence, maintain a healthy family environment and protect the human rights of victims and their family members, by providing for special provisions on procedures for the punishment of criminal domestic violence and by issuing protective orders to change an environment for the persons who have committed criminal domestic violence and to correct their personality and behaviors."
- ¹¹ CEDAW, "Concluding observations on the eighth periodic report of the Republic of Korea," para. 22-23. CEDAW/C/KOR/CO/8.
- ¹² See Punishment of Minor Offenses, Chapter II (Categories and Punishment of Minor Offenses), Article 3 (Categories of Minor Offenses), 1-41 (Consistent Harassment)
- ¹³ See, for example, Article 3, subparagraph 2 of the Framework Act on Gender Equality, Article 2, subparagraph 2 of the Equal Employment Opportunity and Work-Family Balance Assistance Act, and Article 2, subparagraph 3(d) of the National Human Rights Commission of Korea Act.
- ¹⁴ US, 25 February 2009, Section 5; UN 10 Aug. 2007, para. 17.
- ¹⁵ US, 25 February 2009, Section 5.
- ¹⁶ Korea, 4 June 2007, 6.
- ¹⁷ The Korea Times, 20 January 2009.
- ¹⁸ The Korea JoongAng Daily, 16 May 2013.
- ¹⁹ Supreme Court Decision of 16 May 2013, 2012Do14788.
- ²⁰ US, 25 February 2009, Sec. 5.
- ²¹ Korea, 28 August 2009, para. 198.
- ²² Korean Women's Association United, 25 January 2008, "Review of Korea Women's Human Rights"; Korean Womenlink. N.d.a. "About Korean Womenlink." Website link: <http://women21.or.kr/kwau/6858?ckattempt=1>.
- ²³ Article 55-4 (Ad Hoc Protective Orders): (i) When a request for a victim protective order is made under Article 55-2 (1), a judge may rule to issue an ad hoc protective order prescribed in any subparagraph of Article 55-2 (1) against a domestic violence offender if deemed necessary for the protection of the victim. (ii) An ad hoc protective order will be valid until a victim protective order is determined, provided that a judge may restrict the period, if deemed necessary. (iii) Article 55-2 (3) and (4) will apply *mutatis mutandis* to the revocation of an ad hoc protective order or the change of its type. In such cases, "a victim protective order" will be construed as "an ad hoc protective order."
- ²⁴ Thomson Reuters Foundation, 2013.
- ²⁵ Carrying a dangerous weapon is to be taken into account as an aggravating circumstance during sentencing for each of the following offenses.

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