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Notable Supreme Court Decisions on Civil Law: 2022*

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I. Possibility of *Ex Officio* Reduction of Punitive Penalty by Analogical Application of Article 398, Paragraph 2 (Supreme Court *en banc* Decision 2018Da248855, 248862 of July 21, 2022)

A. Facts

Around May of 2014, the plaintiff (counterclaim defendant, hereinafter "the Plaintiff") and the defendant (counterclaim plaintiff, hereinafter "the Defendant") signed a joint business contract (hereinafter "the Contract"), which outlined the joint construction and operation of a golf driving range facility. Article 11 of the Contract stipulated that in the event of a breach of obligation, the nonperforming obligor is bound to pay 1 billion KRW independently from compensation for damages. Subsequently, the Plaintiff requested revisions to the Contract, but the Defendant refused, resulting in a dispute. The Plaintiff engaged in harassing behavior toward the Defendant, who was constructing the golf driving range facility, including restricting internet access and hindering the construction process, leading to the Defendant suspending construction in late October 2014. Both parties sought to rescind the Contract based on reasons attributable to the other

* This article introduces and reviews three notable Supreme Court civil decisions in 2022. Articles cited below without a specific note refer to the Korean Civil Act.

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party and claimed 1 billion KRW as penalty for breach of the Contract in both the claim and the counterclaim. The court of first instance and the appellate court construed the penalty clause in Article 11 of the Contract as a punitive penalty, rather than liquidated damages, and thus granted the Defendant's counterclaim on the penalty clause, denying any further reduction.

B. The Supreme Court's Decision

1. Majority Opinion (7 Justices)

The Supreme Court's precedent, which differentiates punitive penalties from liquidated damages stipulated in Article 398, and thus prohibits *ex officio* reduction of punitive penalties by the analogical application of Article 398, paragraph 2, should be maintained. A textual interpretation of Article 398, paragraphs 2 and 4 only permits a reduction of payment for liquidated damages. Whether a penalty clause is interpreted as liquidated damages or a punitive penalty depends on the interpretation of the contracting parties' intention. The Supreme Court has previously distinguished liquidated damages from punitive penalties and recognized the differing function and effect of each concept. A punitive penalty is an independent sanction imposed for a breach of obligation, and since the breaching party has voluntarily agreed to make a payment to the other party, the intent of the contracting parties should be respected to the fullest extent possible way under the principle of private autonomy. Since excessive intervention by the Supreme Court on punitive penalties undermines their performance-ensuring function, intervention by the Supreme Court should not be readily allowed.

The Korean Civil Act permits reduction of liquidated damages, while remaining silent on reduction of punitive penalties. This is not legislative deficiency but rather an intentional decision by the lawmakers. Additionally, the Supreme Court has established a jurisprudence to control punitive penalties by partially or entirely nullifying them in accordance with the principle of public order and morality. Therefore, the analogical application of Article 398, paragraph 2, to punitive penalties is unwarranted.

2. Dissenting Opinion (6 Justices)

Article 398, paragraph 2 on the reduction of liquidated damages should also be analogically applied to punitive penalties. Liquidated damages and punitive penalty serve similar functions, and the Supreme Court has blurred the line between liquidated damages and punitive penalty, by accepting the concept of a penalty clause which possesses the characteristics of both liquidated damages and punitive penalty. Moreover, the Supreme Court has not distinguished punitive penalty from liquidated damages in the application of the Act on the Regulation of Terms and Conditions. Furthermore, precedents accepting partial or complete nullification of punitive penalties based on the principle of public order and morality aimed to address problems in the old Japanese Civil Law that did not allow the reduction of liquidated damages. Comparative legal analysis also indicates a tendency to allow *ex officio* reduction of punitive penalties. Since the courts have exhibited a cautious approach in reducing punitive penalties on grounds of public order and morality, whether a penalty clause is recognized as a punitive penalty or liquidated damages generates a severe disproportionality and contradiction.

C. Comments

According to Article 398, paragraph 4, a penalty clause is presumed to be liquidated damages. Article 398, paragraph 2, grants the court the power to reduce *ex officio* the amount of liquidated damages. It should be noted that penalty clauses in contracts include not only liquidated damages but also punitive penalties. While liquidated damages are intended to simplify the legal issues related to damage compensation by predetermining the amount of compensation, punitive penalty serves to sanction the violator of the contract and indirectly compel contractual performance. Thus, liquidated damages typically serve a compensatory function, while punitive penalty serves a disciplinary and preventive function.[1)]

1) Jae-Hyung Kim, *Sonhaebaesangaegui yejeongeseo wiyakgeum yakjeongeuro [From Liquidated Damages to Penalty Clause]*, 21(2) Bigyosabeob, 625, 629 (2014) (In Korean).

Distinguishing between liquidated damages and punitive penalty confers two major benefits. First, it establishes whether a separate claim for damage compensation is viable in addition to the claim for the penalty clause. If the penalty clause is presumed to be liquidated damages, a separate claim for independent damage compensation is generally impermissible; however, if it is punitive penalty, a separate claim for damage compensation is allowed.[2] Second, it determines the applicability of Article 398, paragraph 2. Precedents have held that Article 398, paragraph 2, regarding *ex officio* reduction, cannot be applied by analogy to punitive penalty, and the entirety or a portion of the punitive penalty may only be nullified if the punitive penalty is excessively harsh compared to the obligee's gain from the obligation, as in such situations the punitive penalty would be against public order and morality.[3] By a close 7-to-6 decision, the majority affirmed the current precedent.

The dissenting opinion that advocates for the analogical application of Article 398, paragraph 2 to allow *ex officio* reduction of punitive appears more persuasive. First, the functional distinction between liquidated damages and punitive penalty is not straightforward. Reasonable parties will not agree to an insufficient amount of liquidated damages to avoid providing incentives for breaching a contract. Therefore, liquidated damages also play a role in preventing a breach of contract. Moreover, the distinction between liquidated damages and punitive penalty has become increasingly ambiguous in recent jurisprudence. The Supreme Court, for example, embraced the concept of a "hybrid" penalty clause, holding that a penalty clause in an electricity supply contract possessed the characteristics of both liquidated damages and punitive penalty,[4] and the court may reduce *ex officio* the penalty based on the total amount of penalty, absent exceptional circumstances, through the application of Article 398, paragraph 2.[5] By comparison, many civil law countries' legal systems, such

2) Daebeobwon [S. Ct.], July 14, 2016, 2013Da82944(original claim) (S. Kor.); Daebeobwon [S. Ct.], July 14, 2016, 2013Da82951(counterclaim) (S. Kor.).

3) Daebeobwon [S. Ct.], Mar. 23, 1993, 92Da46905 (S. Kor.) and other decisions.

4) Daebeobwon [S. Ct.], Apr. 11, 2013, 2011Da112032 (S. Kor.); Daebeobwon [S. Ct.], Oct. 12, 2018, 2016Da257978 (S. Kor.).

5) Daebeobwon [S. Ct.], Nov. 12, 2020, 2017Da275270 (S. Kor.).

as the French Civil Code (Code Civil) Article 1231-5 and the German Civil Code (BGB) Article 343, expressly provide for the reduction of the penalty without particularly distinguishing between liquidated damages and punitive penalties.

The Supreme Court has held that partially or completely nullifying punitive penalty clauses on the basis of public order or morality would significantly limit the principle of private autonomy.[6] Nonetheless, the principles of fair contract and reasonable compensation must also apply to punitive penalty, and reductions are more easily justifiable in punitive penalties as the issue of unfairness is often more pronounced in punitive penalties, given that they are a form of private sanction.[7] In light of all these considerations, strictly restricting the reduction of punitive penalties may be a contradiction, as noted by the dissenting opinion.

It is also doubtful whether there is a fundamental difference between the nullification in whole or in part resulting from a violation of the public order and morality clause, and the reduction based on Article 398, paragraph 2. The Supreme Court stated that the determination of whether a punitive penalty violates the public order and morality clause requires consideration of factors such the contracting party's exploitation of their monopoly or superior status, the contracting parties' status, circumstances surrounding the formation of the contract, the content of the contract, the motives behind the introduction of the penalty clause and the circumstances at that time, as well as the process of breaching the contract. The Supreme Court also held that nullifying a punitive penalty solely based on the high amount of the penalty should be avoided.[8] The Supreme Court also held that liquidated damages, when governed by Article 398, paragraph 2, may be subject to reduction as unfairly excessive damages only in cases where their payment would unfairly pressure the obligor who is in a state of economic hardship, and only after taking into account all relevant factors such as the status of both parties, the purpose and content

6) Daebeobwon [S. Ct.], Dec. 10, 2015, 2014Da14511 (S. Kor.); Daebeobwon [S. Ct.], Jan. 28, 2016, 2015Da239324 (S. Kor.).

7) Young-Joon Kwon, *2016nyeon minbeob pallye donghyang [A General Review on the Supreme Court Decisions on Civil Cases in 2016]*, 78 Minsabeopak 435, 488-489 (2017) (In Korean).

8) Daebeobwon [S. Ct.], Jan. 28, 2016, 2015Da239324 (S. Kor.).

of the contract, the motive behind the introduction of liquidated damages, the ratio of the liquidated damages to the amount of debt, the estimated damage amount, and the transaction practices of that time.[9] When matching one by one the elements listed in the two criteria, it is notable that many of the elements are considerably similar, with the exception of punitive penalties, in which the amount of the penalty itself is given less weight. At least, this distinction seems reasonable. Due to the strong punitive nature of punitive penalties, among the factors utilized to assess the excessiveness of liquidated damages, the ratio of the damages to the debt and the estimated damage amount have less relevance in determining whether a punitive penalty is excessive. Even so, it is viable to sufficiently adjust the criteria through analogically applying Article 398, paragraph 2 in assessing punitive penalties.

In relation to legislation, it would be desirable to amend Article 398 to comprehensively regulate various categories of penalty clauses, allowing *ex officio* reduction not only in liquidated damages but also generally in penalty clauses, including punitive penalties. The majority opinion also does not consider the legislative solution as unfair. The question of whether an *ex officio* "increase" in the penalty amount agreed upon should be allowed requires further consideration, and as such, a definitive answer cannot be provided at this moment. While a reduction is an exercise of the court's discretion in its right of reduction, with the cap set by the parties, an increase is an active exercise of its judicial function, which is closer to the supplementary interpretation of a contract. Thus, the two cannot be equated. In particular, permitting an increase in liquidated damages may undermine the very purpose to preventing conflicts over actual damages. Regarding punitive penalties, a lower amount may reflect the parties' intention to impose a lesser sanction for a breach of obligation, or it may be the result from the risk assessment by each party at the time, or the idea that the compensation of damages it sufficient to remedy the breach of obligation. It remains uncertain, at least for the moment, whether it is necessary to grant the court the authority to *ex officio* increase the amount of penalty only because it appears insufficient based on the *ex-post* evaluation.

9) Daebeobwon [S. Ct.], May 30, 2017, 2016Da275402 (S. Kor.).

II. The Priority between Merger and Provisional Seizure in the Process of Assignment of Claims (Supreme Court Decision 2019Da272855 of Jan. 13, 2022)

A. Facts

The relevant facts necessary to understand the key points of the merit are as follows: Company A held a loan claim against B, who originally held the right to transfer the ownership of a unit in a residential and commercial complex (hereinafter "complex") under construction against A. B assigned this right to A as a substitute for its loan obligations to A. Subsequently, Company A accepted the assignment as an assignee and debtor. Afterward, the Plaintiff, as the creditor of B, provisionally seized B's right of ownership transfer against A, and the seizure decision was served on A. The Defendant is a trust company entrusted by A with the task of constructing and selling the complex. Upon completion of the construction of the complex, the Defendant transferred the ownership title of the complex unit to a new buyer. The Plaintiff claimed that the Defendant's ownership transfer constituted a tort violating the Plaintiff's provisional seizure rights, thereby requesting damages.

B. The Supreme Court's Decision

An assignment of claims denotes a contract between an assignor and an assignee, where the assignor transfers a claim to the assignee while maintaining the claim's oneness. Through the assignment, the claim is transferred from the assignor to the assignee without losing its identity, even if the assignee has not fulfilled the perfection requirements vis-à-vis the debtor. In principle, the effect of such a change in the ownership of the claim occurs at the moment of assignment. If the assignee of a nominative claim is the debtor of the assigned claim, the claim is extinguished, since merger takes place in accordance with Article 507, as the claim and debt are vested in the same person.

On the other hand, the requisite for the assignee to meet perfection requirements against the debtor, as stipulated in Article 450, paragraph 2,

applies when a third party acquires a legal position that conflicts with the assignee's status in relation to the assigned claim while the claim is still in existence. Therefore, in cases where the assigned claim ceases to exist due to a merger, such as when the assignee of the nominative claim is the debtor of the assigned claim, even if the decision for seizure or provisional seizure is delivered to the third-party debtor, such a decision is invalid because it pertains to a nonexistent claim, and thus the creditor who requested seizure or provisional seizure does not fall under the third party specified in Article 450, paragraph 2. Consequently, the Plaintiff's claim for damages on the premise that the decision of provisional seizure is valid, should be dismissed.

C. Comments

The contract for assignment of nominative claims is a dispositive act that brings about a change in the ownership of a claim. It conceptually differs from a transfer of obligation contract, which creates an obligation to assign claims.[10] In practice, these two types of contracts are often combined and executed simultaneously through a single document known as a *claim assignment contract*. Between the assignor and the assignee, the transfer of a claim occurs immediately in accordance with the claim assignment contract. Notice by the assignor or consent by the debtor is only a requisite for the assignee to perfect its assignment against the debtor or a third party. If the debtor is notified that the claim has been assigned or the debtor consents to the assignment, the assignment is perfected against the debtor, as stated in Article 450, paragraph 1. For an assignment to be perfected against a third party other than the debtor, such a notice or consent shall be made by a certificate with a fixed date, according to Article 450, paragraph 2.

In the context of Article 450, paragraph 2, a common issue concerns the priority of competing claims when the assignor makes a double assignment of claims. To establish legal transfer of the claim another assignee who is a third party other than the debtor, the assignee must obtain a notification or

10) Daebeobwon [S. Ct.], Mar. 24, 2011, 2010Da100711 (S. Kor.).

a consent that is certified with a fixed date. In other words, those who possess such a notice or consent are accorded priority over competing assignees. If both assignees meet the requirement, priority is determined by the date of perfection, i.e., the date of delivery of by a certified fixed date or the date of consent by a certified fixed date.

In case where a judgment creditor seeks to make the assigned claim the subject of compulsory execution, the priority of the assignee and the judgment creditor is determined by comparable rules. The priority is determined by comparing the certified fixed date on which the assignment was perfected against a third party, with the date on which the judgment creditor's provisional seizure or seizure order is delivered to the third-party debtor (debtor of the assigned claim). If the assignee with a certified fixed date first acquires perfection, the assignee prevails over the judgment creditor, rendering any subsequent provisional seizure or seizure order invalid as it pertains to an already assigned claim. Conversely, if the assigned claim is provisionally seized before the assignee obtains perfection against third parties, the claim is assigned to the assignee, but the assignee cannot recover the claim as it has been seized. If the provisional seizure holder prevails in litigation concerning the claim that the provisional seizure preserves, the assignment of the claim then becomes invalidated.[11)]

In the present case, the assignee and the debtor of the claim being the same person (Company A), neither the assignee nor the creditor fulfilled the requisite notice or consent with a certified fixed date. At first glance, the present case may be framed as a matter of determining the priority of the assigned claim between the assignee and the provisional seizure holder. However, the present case pertains not to the "attribution" of assigned claims, but rather to the "existence of the claim." The Supreme Court has held that if a claim which was meant to be subject to provisional seizure or seizure had already been extinguished through payment at the time the provisional seizure or seizure order was delivered to the third-party debtor, the provisional seizure or seizure was invalid since the claim no longer existed by that time.[12)] In the present, the Supreme Court applied that precedent to a situation where the claim was extinguished due to a merger.

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11) Daebeobwon [S. Ct.], Apr. 26, 2002, 2001Da59033 (S. Kor.).

12) Daebeobwon [S. Ct.], Oct. 24, 2003, 2003Da37246 (S. Kor.).

As mentioned above, the assignment contract itself is sufficient to trigger the transfer of the claim. Accordingly, if the creditor and the debtor are the same person, as per Article 507, the claim becomes nonexistent due to the assignment contract, as it changes the ownership of the claim between the assignor and the assignee. The protection of a third party who has a legitimate interest in the claim is present and accounted for by the legislators, since Article 507 precludes merger when the claim is for the benefit of a third party's rights. Nonetheless, in the present case, the Plaintiff did not seize or provisionally seize the claim prior to the assignment of the claim, so the aforementioned exception to merger was not applicable.

If the assignee is given priority over the provisional seizure or seizure holder without a certified fixed date, as ruled in the present case, there is a risk that the assignor and the assignee could conspire to produce a falsely backdated assignment of claim contract in order to attain merger and evade execution of the provisional seizure or seizure. However, such a risk of conspiracy is not unique to merger, as it also exists in the case of reimbursement, which is a common cause of claim extinguishment. For instance, to neutralize the provisional seizure or seizure of a claim, a creditor and a debtor of a seized claim may create a backdated reimbursement certificate to falsely demonstrate that they have already reimbursed the seized claim before the delivery of the provisional seizure or seizure order. The risk of conspiracy should rather be prevented by a rigorous examination of whether a seized claim truly became nonexistent by merger prior to the delivery of the provisional seizure or seizure order. Imposing a strict requirement for claim assignments such as a certified fixed date in anticipation of the emergence of a judgment creditor of a second assignee, whose emergence is uncertain, does not appear to be an optimal approach. Therefore, the Supreme Court's decision in the present case is sound and justifiable.

III. Gender Correction for Transgender Individuals with Minor Children (Supreme Court *en banc* Decision 2020Seu616 of Nov. 24, 2022)

A. Facts

The applicant, who was born biologically male, has experienced a female gender identity since childhood and suffered mental distress as masculine characteristics developed during puberty. The applicant married and had two children who are currently minors. However, the marriage ended in divorce after about 5 years and 10 months due to the applicant's gender identity issues. Following the divorce, the applicant underwent gender-affirming surgery, which involved the removal of the testicles and penis and the creation of female genitalia. The applicant began living as a woman by dressing as such, taking on women's hairstyles, and behaving as a woman in social settings. The applicant sought to correct the gender on the Family Relations Certificate. The appellate court rejected the application on the grounds that granting gender correction to a person with minor children would be detrimental to the welfare of those children.

B. The Supreme Court's Decision

The majority opinion of the Supreme Court has vacated and remanded the decision of the appellate court. The Supreme Court held that the appellate court misinterpreted the jurisprudence concerning the criteria for gender correction of a transgender person, Article 10 of the Korean Constitution, which stipulates that all citizens shall be assured of human worth and dignity, and Article 11, paragraph 1, of the Korean Constitution, which stipulates that all citizens shall be equal before the law, leading to its failure to conduct a necessary review. The legal rationale is as follows:

"As equal members of our society, transgender people are entitled to human dignity and the right to pursue happiness and live a humane life. Since such rights should be protected, it is necessary to ensure that a transgender individual's fundamental rights as a human being should be guaranteed to the fullest extent possible in deciding whether a gender

correction should be granted.

Gender correction is to reflect the current situation of the transgender person having undergone gender transition into official documents. Gender correction does not significantly alter or affect the rights and duties in the relationship between the transgender parent and the minor children. While minor children can be are mentally confused and shocked by their father's or mother's gender transition, such confusion and shock arise once their parents' gender change becomes an irrevocable, fait accompli.

The state bears an obligation to prevent any unlawful disclosure of content related to gender correction in the Family Relations Certificate, as well as to undertake legal and institutional initiatives to address bias and misconceptions against transgender people and their families. Refusing gender correction on the Family Relations Certificate of transgender people for the aforementioned reasons is unacceptable, as it would constitute a dereliction of the state's fundamental obligation to protect the stability of families from harm to transgender people and their minor children due to social prejudice.

In determining whether gender correction should be allowed for transgender individuals with minor children, it is imperative to ensure to the maximum extent their fundamental constitutional rights, such as human worth and dignity, the right to pursue happiness, and the right to equal treatment. At the same time, the minor children's welfare, including their right to receive protection and care, must be taken into account. In addition to assessing the satisfaction of the general criteria for gender correction, it is necessary to analyze the impact of permitting or denying the gender correction on the welfare of minor children when determining whether to allow gender correction."

There was a dissenting opinion from Justice Lee Dong-won stating that the Supreme Court *en banc* Decision 2009Su117 of Sep. 2, 2011 (hereinafter "the 2011 Decision") which precludes gender correction for transgender individuals with minor children, should be upheld as it accords our legal system and the child's welfare, and represents a rational determination that conforms to social norms. There were two concurring opinions to the majority opinion.

C. Comments

In the landmark Supreme Court *en banc* Decision 2004Seu42 of Jun. 22, 2006, gender correction for transgender persons was permitted for the first time, with the Supreme Court finding it reasonable to allow those who were clearly transgender to correct the gender on the Family Relations Certificate (called the Household Registration at the time). However, the subsequent 2011 Decision established that gender correction could not be granted to transgender persons with minor children, as the welfare of those children should be prioritized. The 2011 Decision underscored that gender correction could potentially cause the mental confusion or shock to the children and the disclosure of gender correction expose them to discrimination or prejudice, which may create various hardships in their lives.

The 2011 Decision has been subject to criticism by legal scholars and sociologists alike. Professor Jinsu Yune's argument,[13] which is believed to have played a significant role in the majority opinion that overturned the precedent, contends that the mental confusion experienced by the child is not due to the permission of gender correction itself but rather to the change in the parent's gender. Thus, the permission itself does not have a psychological impact on the child. The 2011 Decision appears to be concerned that the child will suffer due to the news of the parent's gender change disclosed to others. However, this argumentation is problematic since it presupposes social discrimination and prejudice against transgender people as an established fact and reasons that minor children should not be exposed at all to such discrimination and prejudice. Even if allowing gender correction has adverse effects on the welfare of minor children, the disadvantages to transgender people far outweigh those to minor children.

Professor Yune positively evaluated the overturning of the precedent by the Supreme Court, but he remained hesitant to concur that the presence of

13) Jinsu Yune, *Miseongnyeon janyeoreuldun seongjeonhwanjaui seongbyeoljeongjeong [Gender Correction of Transgender Parents with Minor Children]*, 61(3) Seoul L.J. 1, 15-20 (2020) (In Korean).

a minor child should still be considered in determining whether to allow gender correction.[14] Conversely, some critiques contend that gender correction is not solely an issue of correcting records, but also bears significant legal and extra-legal consequences on the fundamental concepts and significance of family and marriage; it is a complex matter that cannot be resolved solely by maximizing the applicant's right to pursue happiness, and allowing gender correction through court decisions exceeds a judge's permitted boundary of power to make law.[15]

Although the present case concerned a divorced couple, it is generally understood that the jurisprudence also applies to couples that are not divorced. The majority opinion is correct in that transgender individuals continue to experience discrimination and marginalization in society. In particular, the workplace is recognized as an environment in which transgender people must completely conceal their identities to avoid adverse treatment in relation to personnel changes, performance evaluations, and promotions. Moreover, when utilizing sex-segregated facilities such as public restrooms, they are subject to derogatory remarks or physical violence.[16]

The potential for discrimination increases when a transgender individual's outward gender presentation does not correspond with the legal gender indicated in official documents such as identification cards or passports.[17] While family law is designed and operates to guarantee and

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14) Jinsu Yune, *Miseongnyeon janyeoga inneun seongjeonhwanjaui seongbyeoljeongjeonge gwanhan daebeobwonui pallyebyeongyeong [Overruling of the Supreme Court Decision on the Gender Correction of Transgender Parents with Minor Children]*, Beomnyulsinmun (Dec. 14, 2022, 09: 51), https://www.lawtimes.co.kr/Legal-Info/Legal-Info-View?serial=183748&kind=CC01&key= (In Korean). However, Professor Yune remarks that even according to the majority opinion, it is difficult to know if there would actually be cases where gender correction is denied due to the negative impact on the welfare of minor children, thus the rejection of gender correction on those grounds would not occur in practice.

15) Jung-Kwon Kim, *Seongjeonhwane ttareun seongbyeoljeongjeongheogaga gwayeon pallyebeopjeok sahanginga? [Is Permission on Gender Correction Due to Gender Transition a Case Law matter?]*, Beomnyulsinmun (Dec. 8, 2022, 08:59), https://www.lawtimes.co.kr/Legal-Info/Legal-Info-View?serial=183490&kind=CC01&key= (In Korean).

16) Jaedanbeobin Gongigingwonbeopjaedan gonggam, Seongjeok jihyang·seongbyeoljeongch eseonge ttareun chabyeol siltaejosa [A Survey on Discrimination by Sexual Orientation and Gender Identity] 329 (2014) (In Korean).

17) Concurring Opinion of Justice Kim Seon-soo and Oh Kyeong-mi.

protect the welfare of minor children, any mental confusion or distress experienced by such children is primarily to the realization that their parent's gender identity diverges from the legally recognized gender. It is necessary to address the potential discrimination minor children may face when the Family Relations Certificate is disclosed through an effort to promote social inclusiveness and eliminate underlying social prejudice or discrimination. For instance, the adoption of same-sex marriage can abolish the discriminatory factor of having parents of the same gender. The upcoming legal challenge regarding the requirements for gender correction will be determining the criteria for gender reassignment surgery[18)]—known to be the most burdensome aspect in the preparation for gender correction.

18) Minhui Ryu et al., Teuraenseujendeoui seongbyeoljeongjeong jeolchagaeseoneul wihan seongbyeoljeongjeong gyeongheomjosa [A Study on the Experience in Change of Gender for Improving the Procedure in Change of Gender of the Transgender People] 116 (2018) (In Korean).