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Comparative Criminal Procedures
Midterm Paper

Introduction

The Republic of Korea (commonly known as South Korea) is a nation roughly the size of Indiana in East Asia.¹ Despite its size, South Korea is one of the most powerful countries today. One major factor in its success is due to the Western influence; especially the United States. South Korea is economically, politically, and socially structured similarly to the structures of the United States. In saying so, this paper will analyze the American and Korean criminal procedural laws- more specifically the rules pertaining to Miranda Rights in the investigation processes.

Miranda Rights

South Korea

South Korea's criminal procedural laws have gone through significant reforms since the 1950s. Korean citizens today enjoy more procedural rights and more due process protections in the realm of criminal procedure than ever before. One example comes from a South Korean Supreme Court case that is commonly known as the "20th Century Faction Case."² This case established similar rights as the United States' Miranda Rights. The South Korean Supreme Court interpreted the Article 200(2) of the South Korean Constitution to mandate investigative authorities (the prosecutor or police) to inform a suspect of his//her right to silence before interrogation. This right to silence is an extension of the right against self-incrimination. The Court went further to say that if

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/ks.html>

² The Unfinished "Criminal Procedure Revolution" of Post Democratization South Korea, 30 Denv. J. Int'l L. & Pol'y 377 (2002)

an investigative authority obtains information from a suspect without informing his right to silence, the evidence obtained from interrogation must be excluded. This exclusion rule even applies when an individual voluntarily discloses evidence.

Alongside the right against self-incrimination, South Korea acknowledges the right of an individual to receive assistance from counsel when arrested or detained. This right is found in Article 12(4) of the Korean Constitution and in Articles 30 and 34 in South Korea's Criminal Procedure Code. All evidence must be excluded if retrieved by hindering this constitutional right.³

United States

Like South Korea, Miranda Rights in the United States establishes one's right to remain silent and the right to the presence of an attorney during custodial interrogation. A suspect in custody may waive his Miranda Rights. An individual may waive his Miranda Rights as long as it is made voluntarily (under free will and not under intimidation, coercion, etc.) and "made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it."⁴

Differences of Miranda Rights

One stark difference between the Miranda Rights of the two countries stems from a U.S. Supreme Court Case- *Berghuis v. Thompkins*. In 2010, the Supreme Court held that unless a suspect in custodial interrogation actually invokes his Miranda Rights, the

³ The Unfinished "Criminal Procedure Revolution" of Post Democratization South Korea, 30 *Denv. J. Int'l L. & Pol'y* 377 (2002)

⁴ Waiver of Right to Remain Silent and Right to Counsel During Custodial Interrogation, 21A *Am. Jur. 2d Criminal Law* § 915 (2012)

prosecution is free to interrogate and use any voluntary statements as evidence in court. Silence, by itself, is not enough to invoke the rights.⁵ However, in Korea, as mentioned above, voluntary statements made by a suspect in custody must be excluded and cannot be used in court.

Conclusion

Citizens of both the United States and the Republic of Korea enjoy similar Miranda Rights. Both nations have procedural guarantees to the right to be silent and right to counsel during custodial interrogation. The biggest difference comes from the way this right is invoked and the way the evidence produced may be used in the court of law.

⁵ Berghuis v. Thompkins, 130 S.Ct. 2250 (2010)