

**Seoul High Court**  
**The 1-1st Administrative Branch**  
**Decision**

**Case No.** 2021Nu34345 Cancellation of the Decision of Non-Recognition of  
Refugee Status

**Plaintiffs**

1. A
2. B
3. C

As a minor, parents act as legal representatives.

Father A, Mother B

**Defendant**

Head of the Incheon Immigration Office

**Decision of the First Instance** Incheon District Court, Decision of 5 February 2021, 2020GuDan51478

**Closing of Hearings**

11 March 2022

**Date of Decision**

19 April 2022

**Rulings**

1. The decision of the court below is revoked.
2. Each of the Defendant's decisions of non-recognition of refugee status against the Plaintiffs on 18 June 2019 is revoked.
3. The litigation costs are borne by the Defendant.

## **Purport of the Claim and Appeal**

As stated in the Rulings.

### **Reasoning**

#### **1. Background of the Disposition**

A. The Plaintiffs are foreigners of the Islamic Republic of Pakistan (hereinafter referred to as 'Pakistan') nationality. Plaintiff A (hereinafter referred to as 'Plaintiff 1') and Plaintiff B (hereinafter referred to as 'Plaintiff 2') are married (hereinafter referred to as the 'Plaintiff Couple'), and Plaintiff C (hereinafter referred to as 'Plaintiff 3') is their child.

B. Plaintiff 1 first entered the Republic of Korea on 22 February 2014, with a student status(D-2), and completed a Master's course at D University's Graduate Institute of Peace Studies. After graduation, he was permitted to change his status of stay to a job seeker(D-10) on 20 March 2017. He was permitted to extend his duration of stay three times with the same status(D-10), and on 29 March 2019, he applied for recognition of refugee status to the Defendant.

C. Plaintiff 2 married Plaintiff 1 in Pakistan on 7 May 2016 and entered the Republic of Korea on 7 August 2016 with a status of stay for Family Dependents(F-3). She, along with Plaintiff 1, applied for recognition of refugee status to the Defendant.

D. Plaintiff 3 was born in Korea on 4 September 2017 and applied for recognition of refugee status to the Defendant on 29 March 2019 (this application, along with the aforementioned applications by the Plaintiff Couple, is hereafter collectively referred to as the 'Application')

E. The Defendant denied the recognition of the Plaintiffs' refugee status on 18 June 2019, reasoning that the claims by the Plaintiffs do not fall under the 'well-founded fear of being persecuted' as stipulated by Article 1 of the Convention relating to the Status of Refugees and Article 1 of the Protocol relating to the Status of Refugees (hereinafter 'Refusal').

F. The Plaintiffs filed an appeal to the Minister of Justice on 26 July 2019 but received a dismissal on 23 December 2019.

**[Grounds for Reasonings]** Undisputed facts, Plaintiff's evidence 1, 2, and 3, Defendant's evidence 1, 2, and 3 (including branch numbers if they exist; the same applies hereinafter), and the overall purport of the pleadings.

## **2. Legality of the Disposition**

### **A. The Argument of the Plaintiffs**

The Plaintiff Couple had married despite the disagreement from Plaintiff 2's family members, and thus have a well-founded fear of threat, confinement, physical assault, or even murder by Plaintiff 2's family members upon their return to Pakistan. The Plaintiff Couple are 'a female who has married someone from another race and social class(caste) against her family's will, and her husband', and thus constitute 'members of a particular social group'. The likelihood of effective protection by the Pakistani government is very low, due to the corruption and connivance, as well as the lack of will and competency of the Pakistani judicial authorities, and even if they move to another region within Pakistan, they are unlikely to avoid such persecutions. The Refusal, which nevertheless has not recognized the Plaintiffs' refugee status, is therefore illegal and must be revoked.

### **B. Relevant Acts and Subordinate Statutes**

As listed in the attached, 'Relevant Acts and Subordinate Statutes'.

### **C. Current Situation concerning 'Love Marriages against the Will of the Family' in Pakistan, and the Plaintiffs' Statements concerning Persecution**

1) The domestic situation concerning 'Love Marriages against the Will of the Family' in Pakistan

a) Pakistan is traditionally a patriarchic society, and there exist many persons and kin groups who regard women as subjects of control and protection by their male family members, and marriage as an exchange or transaction between different family groups. To them, the voluntary choice of marriage partners by

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women is deemed absurd and unacceptable, harming the honor of the family, which can only be restored by physically mutilating the body of the offending woman.

b) According to the formal laws of the country, Pakistani women are able to marry without consent from their families. However, when they marry according to their own choice against the will of their families, and especially in occasions where the partners' race or caste is not of an equal level to that of the women, they may be physically confined, assaulted, or even murdered by their fathers, male siblings, and other family members for dishonoring the family (for the sake of convenience in writing the decision, such acts shall hereinafter be referred to as 'honor crimes', and murder in particular shall be referred to as 'honor killing').

c) Even in cases where the woman is acknowledged to have married according to her own free will, there are occasions where the woman's family makes false accusations claiming that the husband has abducted the woman. For instance, when Plaintiff 1's male brother E, similarly to the Plaintiff Couple, had married another woman(F) after a period of romance, her family members filed a false First Information Report(hereafter referred to as 'FIR'; It is the standard document to report crimes, or the first step of crime investigation. Especially, the P District Police website defines FIR as 'a report of an identifiable crime, submitted to the police records in a specific format'.) stating that he had abducted the woman, and attempted to forcibly drag her away in the streets. E filed an application for a remedy to the competent Pakistani court on 20 April 2010. While the legal proceedings were taking place, F temporarily returned to her family according to the agreement of the opposing parties, and suddenly notified E, through court, that the marriage is cancelled. E attended the hearing at the competent court, heard from F herself that she had no intention to maintain the marriage, returned home alone, and committed suicide with a gun not long after, on 16 July 2010.

d) It is not difficult to find cases where the father or male sibling chased down and murdered the woman, along with her husband and children, even when they had left their households or had taken refuge in regions distant from home.

e) Pakistan has the highest number of honor killings per capita in the world, and human rights institutions such as the Pakistani Human Rights Committee and Human Rights Watch(HRW) estimate the number of honor killing victims in Pakistan to be around 1,000 per year. P, the district in which the Plaintiff Couple had been living, is known to be the region with the largest reported number of crimes against women in

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Pakistan.

f) The Pakistani Congress has strengthened the punishment for honor killings through an amendment of the Criminal Act in 2016. The amended Criminal Act has deleted the clause that exempted punishment to the offender when he received a pardon from the victim's family and made it mandatory to sentence 25 or more years of imprisonment, which is longer than that of ordinary murder. However, in cases where the aggressor is sentenced to death, the amended law allowed sentencing of 12.5 years or more years of imprisonment if the victim's family requested mitigation of punishment.

g) Despite the aforementioned amendment, according to the report of the UN Committee against Torture (2017) and the report of the US Department of State (2020), there still exist hundreds of honor killing cases in Pakistan per year. Many cases are not reported to the investigation authorities due to them taking place within the family, and even in cases where they were reported, many of them did not result in prosecution or punishment. In Pakistan, honor killings tend to be accepted as acts of righteous retribution against the dishonoring of the family, and *jjrgas* (tribe senates), as the traditional arbitration/adjudication organizations of communities, tend to acquit, or give only light punishments to the aggressors of honor crimes. For instance, between 2014 and 2019, a total of 769 (of which 510 were women) people fell victim to honor killings in the Sindh district, of which 649 were prosecuted by the police, and 136 were sentenced to be not guilty (the rate of innocence is around 21%, but only 2% of the prosecuted were found guilty, and the rest is undergoing litigation). The Pakistani Human Rights Committee, pointing out that while at least 280 cases of honor killings had taken place between October 2016 and June 2017, the High Court of Peshawar acquitted a person twice accused of committing honor crime, even after the Criminal Act was amended, and found that the amended Criminal Act is ineffective in preventing the custom of honor killing. Even after the aforementioned amendment had taken place, the Pakistani Supreme Court revoked a High Court decision of life sentence to a person accused of murdering a female family member for engaging in adulterous sexual relations and thus dishonoring the family, and instead rendered 15 years of imprisonment, based on the Criminal Act's provisions that provide that manslaughter due to "sudden and grave provocation" is not regarded as "murder". In its reasoning, it ruled that "our culture and social values reflected in the jurisprudence developed so far is that an act of illicit sex with a female family member of the offender is considered sufficient to cause provocation so sudden and grave that it would deprive the offender of the power of self-control", thus providing a legal logic to evade the application of the amended Criminal Act.

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h) The UN Committee on the Elimination of Discrimination against Women has raised concerns about the continuation of harmful and discriminative customs such as forced marriages and honor killings in March 2020. It has recommended the Pakistani Government to endeavor towards raising awareness of investigation/judicial institutions and implementing additional legislation such as installing shelters for victims of honor crimes.

i) Many judicial institutions abroad such as the Australian Administrative Appellate Court(2009, 2016, 2018, and 2021), US Immigration Court in Nebraska(2010), US Chicago Immigration Court(2011), US San Francisco Immigration Court(2011) have recognized the refugee status of ‘Pakistani women who have married against the will of the family, or who have declined to marry the partners their families have designated’.

2) The Plaintiffs’ Statements concerning Persecutions

a) Plaintiff 1 has made the following statements in the interview procedure after the application for recognition of refugee status, and also during the examination of the court of the first instance.

(1) Plaintiff 1 first met Plaintiff 2 in a Kentucky Fried Chicken(KFC) store located in R, when he was visiting Pakistan in or around March 2016, during his master’s course at D university’s Graduate Institute of Peace Studies.

(2) In or around April 2016, Plaintiff 2 declared her intention to marry Plaintiff 1 to her family. She faced strong objections from her family due to the Plaintiff 1 coming from a different ethnic group, and the existing marriage arrangement for Plaintiff 2.

(3) Plaintiff 1 officially registered his marriage with Plaintiff 2 on 7 May 2016. Plaintiff 2 has written a document stating that she is “willing to marry Plaintiff 1 with her free will, without any external coercion or pressure”, and had it authenticated by an attorney(Plaintiff’s Evidence 5).

(4) In mid-June 2016, Plaintiff 2’s mother discovered the marriage while she was getting a Certificate of Family Relations issued.

(5) In mid-June 2016, Plaintiff 1’s friend had gone to meet Plaintiff 2’s family in Plaintiff 1’s stead, for fear that Plaintiff 1 might face honor crimes if he went himself. However, a police officer accompanying

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Plaintiff 2's family arrested him, and only after Plaintiff 1 presented himself to the police station and submitted a certificate of marriage, and the aforementioned affidavit could he be released. In the police station, Plaintiff 2 produced an affidavit claiming that she had married Plaintiff 1 entirely of her free will, but her uncle threatened her to inflict harm on Plaintiff 1 if she did not withdraw her statements.

(6) 2-3 days later, Plaintiff 2 fled from her home and began staying with Plaintiff 1. Her family contacted her and suggested to return home, explaining that the *jirga* had decided to arrange an official wedding for her. Believing this, Plaintiff 2 returned, only to be confined and physically abused by her mother and uncle, often with insults like 'a tainted woman', or 'the woman who has dishonored the household'.

(7) On 30 June 2016, an application for relief based on the Habeas Corpus Act was filed to the court(Plaintiff's Evidence 25, 26, and 27). When the court subsequently summoned Plaintiff 2 and her family on 1 July 2016, a police officer who had been bribed by the Plaintiff 2's family threatened Plaintiff 2 that he/she would murder Plaintiff 1 if she testified to any confinement or assault inside the court. Plaintiff 2 thus proclaimed in court that she was not illegally confined and returned home. The court consequently dismissed the claim.

(8) In or around early July 2016, Plaintiff 2 called Plaintiff 1 using a borrowed cell phone from her aunt, and together they escaped and took shelter in a place near K.

(9) On or around 10 July 2016, Plaintiff 2's family discovered the place where they had been hiding. They attempted to drag her off while Plaintiff 1 was absent. However, she was able to flee from the site with help from neighbors who had heard the sound of her resistance.

(10) On the morrow, Plaintiff 2 filed a complaint to the court of K, claiming that 'her family had attempted to kidnap her(Plaintiff's evidence 6, 29). However, she did not attend the hearing process, due to fear from many cases of people being murdered after asking the court for help.

(11) In or around mid-July 2016, Plaintiff 2's family visited Plaintiff 1's mother, brother, and sister-in-law with a police officer in order to demand Plaintiff 1's whereabouts, shouting insults and exercising physical violence in the process. The police officer subsequently took the Plaintiff 1's family to the police station. They were barely able to be released after Plaintiff 1's brother had promised to aid in the finding of Plaintiff 1. However, a few days later, Plaintiff 2's family kidnapped, threatened, and assaulted him.

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(12) On 18 July 2016, Plaintiff 2's family registered a false FIR(Plaintiff's Evidence 7), by bribing the police, which stated that Plaintiff 1 and his brothers had stolen their gemstones. The Plaintiff 1's family subsequently left their original residence and moved to another village.

(13) Plaintiff 2 thought that it would be dangerous to visit R where her family lived, so she had her passport newly issued in K, and also a companion visa at the Korean embassy.

(14) On 6 August 2016, on transit to Korea with Plaintiff 2, Plaintiff 1 called Plaintiff 2's uncle, in order to ask him to permit their marriage and stop harassing his family. However, Plaintiff 2's uncle responded with a threat to chase down Plaintiff 1's family and make revenge if they did not return to Pakistan.

(15) On 12 August 2016, Plaintiff 2's family found and visited where the Plaintiff 1's mother lived. They assaulted her in sight of the neighboring villagers. Plaintiff 1's mother filed a FIR against Plaintiff 2's family while she was requesting help from the police, but the police refused to accept the application due to the influence of Plaintiff 2's family.

(16) Even after they had entered the Republic of Korea, they received persistent threats from Plaintiff 2's uncle. In February 2020, he left a voice message on Plaintiff 2's cellular phone, with the following purport: "I have many ways to encounter you. By the will of God, March will be the last month for both you and me."

b) Plaintiff 2 made the following statements when she was applying for refugee status recognition.

(1) She made her decision to marry after she met Plaintiff 1 in or around late March 2016. Her family objected, since his race and caste were *rajput* and were poor. Instead, they suggested marrying her to one of the sons of her father's friends, who was from the same race and caste as her.

(2) Plaintiff 1 told her that her family would not object if they made haste with their marriage registration, so she officially registered her marriage at a court in R, on 7 May 2016, without informing her family.

(3) In or around June 2016, Plaintiff 2's father (residing in L) instructed her mother to issue a Certificate of Family Relations, so that he could invite his family. When her mother gained knowledge of



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her marriage due to her changed surname, she commanded her to get divorced while hitting her. [The Defendant attempts to impeach the credibility of the Plaintiffs' statements regarding the context of her mother's recognition of the marriage, by pointing out that the date she had her passport issued was 19 July 2019, which was later than the above incident. However, it is difficult to find that there are any severe contradictions or discrepancy with objective facts in the Plaintiffs' statements, if we consider the following; there is no evidence that shows this passport was issued for the first time (rather, considering that she had fled from her home, there is a sufficient possibility that she had her passport reissued, due to her old one being left at home); and there is no complete evidence to show that Plaintiff 2, who was arranged to marry another man, was also to be invited (since the details of the Pakistani system of the certification of family relations are unclear, we cannot know at this time whether it is possible to identify the changes in Plaintiff 2's family status by being issued only the certificate of family relations required for the visas of other family members), etc.]

(4) She fled to Plaintiff 1's home after leaving her own, and when she returned home with her mother's promise of a proper wedding, her mother and uncle beat her and forced her to sign the divorce documents.

(5) After two weeks, she left home in order to stay in K with Plaintiff 1. While Plaintiff 1 was absent, her uncle, along with 4-5 relatives, tried to forcibly take her away, but went back without success when her neighbors reported to the police. She filed a complaint to the court on the morrow but did not present herself to the hearings due to fears of being harmed by her uncle if she had done so.

(6) Plaintiff 2's family falsely reported Plaintiff 1 to the police in order to threaten him while he was present at the police, but he did not go. She, along with Plaintiff 1, entered the Republic of Korea after receiving their visas.

(7) Plaintiff 2's uncle threatened Plaintiff 1 to murder them all if he did not divorce her, and her mother and uncle took Plaintiff 1's family to the police station to have them interrogated. She heard from Plaintiff 1's mother that her uncle had gone to her, hit her, and threatened her at gunpoint, after they had entered the Republic of Korea.

(8) Currently she is not in contact with her mother, and her uncle calls and threatens to pay a visit to Korea with his son when he is drunk.

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[**Grounds for Reasonings**] Undisputed facts, Plaintiff's Evidence 5 to 8, 10, 11, 14 to 16, 19, 21, 22, 25 to 30, 42 to 45, 50, Defendant's Evidence 11, 12, 16, 22, 27, the examination of the Plaintiffs at the court of the first instance, the result of the Court's factual inquiry request to the UNHCR Representation in the Republic of Korea, and the overall purport of the pleadings.

**D. Finding**

1) Relevant Legal Principles

The provisions of Article 1 and paragraph 1 of Article 2 of the Refugee Act; Article 1 of the Convention Relating to the Status of Refugees (hereinafter 'Refugee Convention'); and Article 1 of the Protocol Relating to the Status of Refugees provide that the Minister of Justice must, upon application, recognize a foreigner as a refugee under the Refugee Convention if they are unable or unwilling to receive the protection of their country of nationality due to well-founded fear of being persecuted according to their race, religion, nationality, membership of a particular social group, or political opinion, and for stateless persons, if they are unable or unwilling to return to their original country due to such fear.

"Membership of a particular social group", as a reason for persecution as one of the requirements for refugee recognition, refers to a group of individuals sharing an innate characteristic, an immutable shared history, or a characteristic or religious faith so fundamental to their individual identities or conscience that they ought not to be required to renounce it and who form a separate group which is perceived by the surrounding society as being distinct (see Supreme Court Decision 2016Du42913, delivered on 5 December 2017, etc.). For instance, it may be said that one belongs to a "particular social group" if his/her sexual orientation of homosexuality contravenes the moral and legal norms of the refugee applicant's country of origin, and the disclosure thereof would readily expose the applicant to persecution; and the government of his/her country of origin refuses or is unable to offer protection (see Supreme Court Decision 2016Du56080, delivered on 11 July 2017).

'Persecution' means threat against life, body or freedom as well as acts causing serious injury upon essential human dignity or discrimination (see Supreme Court Decision 2007Du3930 delivered on 24 July 2008, etc.). 'Group' refers to multiple individuals who share a characteristic worthy to be protected and can be socially distinguished and typified. It does not always have to possess a systematic entity as an organization, or a shared feeling of identity, belongingness, solidarity, and unity among its members.

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A foreigner requesting refugee status bears the burden of proving a "well-founded fear" of being persecuted. However, it is difficult to impose upon foreigners the burden of proving the entirety of the alleged facts by objective evidence, if we consider the foreigner's special circumstances. Thus, the alleged facts shall be deemed as proven if it is reasonable to recognize them based upon the consistency and persuasiveness of his allegations and the credibility of his entire statement in light of the following: the route of entry into the country, the period between the date of entry into the country and the filing of the request for refugee status, the circumstances surrounding the request for refugee status, the circumstances in the country of nationality, the degree of fear to which the foreigner is feeling subjectively, the political, social, cultural environment of the region where the applicant had been residing, and the degree of fear felt by an ordinary person residing in the relevant region (see Supreme Court Decision 2007Du3930, delivered on 24 July 2008).

2) Specific Findings

a) The Criteria for determining membership of a particular social group and persecution arising therefrom

“A female who has married someone from another race and social class (caste) against her family’s will, and her husband” can be seen as belonging to a particular social group if (1) such marriage is against the widespread marriage customs or norms on a family of the society of the country of origin; (2) they are likely to face persecution (violence or forced divorce and re-marriage, and murder) by their family and kin group; and (3) it is difficult to expect appropriate protection from the government of the country of origin.

In cases where a refugee applicant faces discrimination or serious injury upon essential human dignity, such as threats against life, body, or freedom, including the right to sexual self-determination and right to marriage, such that surpasses mere social criticism or condemnation, it would constitute persecution as defined by the Refugee Convention.

b) Findings in this Case

This case will be analyzed according to the aforementioned legal principles and criteria. Considering the overall purport of the claims with the Plaintiffs’ Evidence 23 and 24, and Defendant’s Evidence 1, as well as the results of the factual inquiry request to the UNHCR Representation in the Republic of Korea,

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the following facts can be ascertained: the Plaintiff Couple had prepared Plaintiff 2's passport and visa immediately after her family visited K in or around July 2016, and left Pakistan on 6 August 2016; directly after his entry in late August 2016, Plaintiff 1 asked for advice on refugee application to the UNHCR branch [sic] in the Republic of Korea and the *Refugee pNan*, for reasons of 'entering Korea because of threats by the family of Plaintiff 2 due to their love marriage', prepared for refugee application with the aid of *Refugee pNan* until late September 2016, but when he realized that his status of stay would be irrevocably changed to G-1, he decided to change his former status of stay(D-2) to D-10 and to stay under this status for some time; while Plaintiff 1 used to come and go between Pakistan and the Republic of Korea every few months after his entrance to the Republic of Korea on 22 February 2014 to take his Master's course in the Republic of Korea, until around August 2016, he has never visited Pakistan since his last entrance to the Republic of Korea after his marriage with Plaintiff 2, until this date of August 2020; UNHCR declared through "Guidelines on International Protection No. 4: 'Internal Flight or Relocation Alternative (hereinafter referred to as IFA)' in the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees" that (i) concept of IFA is not a stand-alone principle of refugee law, nor is it an independent test in the determination of refugee status, and thus must be interpreted in light of the object and purpose of the 1951 Convention (para. 2); (ii) use of the relocation concept should not lead to additional burdens on asylum-seekers (para. 33); and (iii) it is up to the party asserting IFA to identify the area where relocation is possible and bear the burden of proof thereof (paras. 33 and 34). Also considering the already admitted facts, as well as the following information that were revealed before this Court, we find that Plaintiff 2, as a Pakistani woman who had married against the will of her family with a partner of another race or caste through romance, and Plaintiff 1, who as her spouse had experienced specific persecutions such as bodily threats, have a well-founded fear of being persecuted by Plaintiff 2's family if they return to Pakistan.

(1) Plaintiff 1 has made consistent and detailed statements in the refugee interview held through the Application as well as the court proceedings on the essential elements of the case, such as the 'history of their romance, threats and violence they had to endure in Pakistan from the Plaintiff 2's family, and how they came to Korea'. Plaintiff 2's statements at the time of the Application generally align with the Plaintiff 1's statements (although there are some disparities between their statements, they are due to minor exaggerations, their misunderstanding, inaccuracy of their memory due to the elapsed time, and limitations of interpretation, which do not exceed the understandable level of disparity). Arguments by the Plaintiff Couple are plausible considering the aforementioned social/political circumstances in Pakistan, and

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generally align with the objective evidence that the Plaintiff Couple have submitted, such as the Certificate of Marriage Registration and the affidavit of marriage by free will (Plaintiff's Evidence 5), the petition made to the court by Plaintiff 2 (Plaintiff's Evidence 6, 29, and 30), the FIR that the Plaintiff 2's family had filed against Plaintiff 1 and his family (Plaintiff's Evidence 7-1), application for relief based on the *Habeas Corpus* Act that Plaintiff 1 had filed to the Pakistani court (Plaintiff's Evidence 25 to 27).

(2) The right to personality and the right to pursuit of happiness are essential and inherent fundamental rights which are deeply rooted in humanity, and our Constitution guarantees these rights to all individuals, regardless of their nationalities. The right to personality and the right to pursuit of happiness means that one has the right to determine his/her own destiny, which of course includes the right to sexual self-determination, especially the freedom of marriage and the freedom to choose his/her own spouse. Forcing an individual to marry against his/her will, coercing them into being unable to marry the spouse of their choice, or forcing him/her to divorce all violate these inherent basic rights of personality, pursuit of happiness, and sexual self-determination, and constitute a serious and essential infringement on the inherent dignity of the human being.

(3) As seen above, there are numerous annual cases of honor killings against women who married the ones they love, as well as their spouses and children, and P, where the Plaintiff Couple was residing, is known to have the largest cases of such crimes. Then "a female who has married someone from another race and social class(caste) against her family's will, and her husband", such as the Plaintiff Couple, are likely to be seen as 'those who have dishonored their families' against the Pakistani sociocultural norms and are likely to be alienated and threatened with honor crimes by kin groups or local communities who abide by the conventional norms. Also, taking into account the aforementioned sociocultural background, the threats by Plaintiff 2's mother and uncle can be seen as coming from the widespread traditional conventions and norms in Pakistani society, rather than from pure personal feelings.

(4) Even if the acts do not reach the level of direct bodily damage, or deprivation of life or threat thereof, coercing an individual to divorce and remarry with violence, confinement and threats must also be seen as 'persecution' that gives rise to recognition of refugee status. As seen above, what Plaintiff 1's own brother E had experienced, although he cannot be seen as a victim of an honor killing as the Plaintiffs claim, shows that separation of married couples, as well as forced divorce by psychological pressure or physical violence, are typical forms of 'persecution' that can easily happen in the Pakistani society. The fact of his own brother having experienced this situation is reasonable grounds for Plaintiff 1 to experiencing a well-

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founded fear of facing similar circumstances.

(5) In Pakistan, along with widespread corruption of the investigation/judiciary authorities, there still remains a significant number of honor crimes being condoned as customary acts (they are either not reported at all for the honor of the family, or not investigated/prosecuted based on the view that they are family matters). As previously seen, the Plaintiff Couple had actually filed an habeas corpus appeal or petition to the court to prevent the threats and violence of Plaintiff 2's family but gave up during the process due to fears of retaliation from them. Under such circumstances, we find that the Pakistani government, or the investigation/judiciary authorities are practically unwilling to provide or incapable of providing effective protection to the Plaintiffs. The Defendant argues that appropriate protection by the government of the country of origin is possible, considering that: (i) even when the Pakistani police had arrested Plaintiff 1's friend, they immediately released him when Plaintiff 1 presented himself to the police station and explained that the Plaintiff Couple had married according to their free will; (ii) When Plaintiff 1 had applied for the protection of Plaintiff 2 on 30 June 2016, the court immediately initiated the proceedings, and held a hearing at the court on the next day with Plaintiff 2 and her family present at the court, and although the claim had been dismissed, it was the result of Plaintiff 2's denial of Plaintiff 1's claims at court; and (iii) the reason that Plaintiff 2's application for protection to the court, due to her being almost abducted by her family, was dismissed because she did not attend the court hearings. However, the situation in (i) is merely an *ex post* attempt to remedy the illegal arrest of Plaintiff 1's friend, who was mistaken for Plaintiff 1, and the circumstances of (ii) and (iii) instead indicate that the procedures of the Pakistani court are not able to sufficiently guarantee that a woman in need of protection can seek her remedy freely without unjust pressure of her family who are the persecutors, by separating the two parties. The Pakistani government is making efforts to prevent honor crimes by amending the Criminal Act in 2016 to strengthen the punishment for honor crimes, installing an agency for the protection of women in the G region, and collaborating with local religious leaders and tribal seniors to campaign for eradicating honor killings. However, if applicants' claims of past persecutions are rationally acceptable, then their well-founded fear of being persecuted, as grounds for refugee recognition, is accepted unless it can be exceptionally recognized that the possibility of persecution has been clearly eliminated due to significant improvement in the situation of the country of origin (Supreme Court Decision 2010Du27488, delivered on 26 April 2012). We cannot find based on the above that there has been significant improvement of the situation in Pakistan that would clearly eliminate the possibility of persecution against the Plaintiffs, considering the following: (i) the number of honor crimes has not significantly dwindled even after the amendment of the Criminal Act in 2016; and (ii) there

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exist reports that the effective punishment of honor crime perpetrators is not being achieved due to the lukewarm response of investigation/judiciary authorities (although the fact that there are ongoing campaigns to eradicate honor crimes means that the Pakistani government is striving to put an end to the honor crimes, it also shows that the cooperation of the traditional societies such as religious leaders and tribal seniors, which is indispensable for effective prevention of honor crimes, remains at a tepid level).

(5) Based on the fact that Plaintiff 1 completely stopped going to Pakistan after his entry to the Republic of Korea on 7 August 2016 after being married to Plaintiff 2, contrary to his frequent past travels between the Republic of Korea and Pakistan, we believe that he is experiencing a considerable amount of fear on the circumstances he may face if he returned to Pakistan.

(6) The Plaintiffs would have to register their address of residence to the National Databases and Registration Authority for the sake of Plaintiff 1's employment or Plaintiff 3's education if they were to permanently return to Pakistan. As can be seen in the case of Plaintiff 2's family finding her and attempting to drag her off even when the Plaintiff Couple had hidden near K, the capital of Pakistan, to evade them, there is a risk that their registered address may be revealed and tracked by the Plaintiff 2's family. Therefore, we find that, contrary to the Defendant's arguments, it would be difficult to expect that the Plaintiffs would easily find an internal flight alternative location in Pakistan, where they may enjoy peaceful lives away from persecution (the Defendant has failed to meet their burden of argument and proof on identifying a specific area where relocation is possible, in accordance with the standards of the UNHCR Guidelines on International Protection No. 4, paras 33 and 34).

(7) Considering the circumstances of the Plaintiff Couple's Application after their entry into the Republic of Korea, that fact that their Application was somewhat late, that Plaintiff 1 engaged in some employment to sustain himself, and that Plaintiff 1's siblings and relatives had entered the Republic of Korea afterward and engaged in activities that may give rise to suspicions that they abused their right to refugee application in order to extend their duration of stay are not sufficient to lead to the conclusion that the Plaintiffs applied for Refugee Status Recognition solely for the sake of extending their stay.

c) We now turn to the Defendant's decision on Plaintiff 3. There exists a humanitarian need to recognize his/her refugee status, who is a minor child between the Plaintiff Couple, considering the following as well as what we have discussed above: (i) families are natural and fundamental units of the society, and deserve the protection of the society and country. When one member of the couple meets the requirements of refugee status recognition, refugee status must be granted to at least his/her spouse and their minor children as

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his/her dependent family members, according to the “principle of family unification”(see Constitutional Court Decision 2011HeonMa520, delivered on 28 November 2013; Recommendations from the Final Act of the United Nations Conference of Plenipotentiaries that adopted the Refugee Convention; and Article 37(1) of the Refugee Act); (ii) as seen above, there are cases in Pakistan where the spouse and children also fall victim to honor crimes in addition to the woman who had married the one she loves, and we cannot rule out the possibility that Plaintiff 3 would be persecuted by the Plaintiff 2’s family if he/she returns to Pakistan (this conclusion also holds for Plaintiff 1, even if we were to conclude that only Plaintiff 2 meets the requirements for refugee status recognition).

d) Therefore, we find that the Application that rejected the Plaintiffs' application for refugee status based on grounds different from the above is illegal.

### **3. Conclusion**

Therefore, we find for the Plaintiffs, and the decision of the court below that is contrary to our finding is unjust. We accept the Plaintiffs’ appeal. Therefore, the judgment of the court below is hereby revoked, and the Plaintiffs’ claims are accepted as per the ruling.