

言詞辯論意旨狀

聲請人：臺灣花蓮地方法院刑事第三庭溫股法官何劭鋼

為聲請司法院大法官解釋事，爰提出言詞辯論意旨如下：

一、聲請標的及聲請事實

聲請人為臺灣花蓮地方法院106年度易字第589號、106年度易字第600號、107年度花原易字第5號、107年度花原易字第20號案件受命法官，上開案件均係經檢察官提起公訴，認案件被告涉犯刑法第239條前段或後段之通姦罪或相姦罪。本院於審判中，認各該案件應適用之刑法第239條違反比例原則侵害人民憲法第8條人身自由、第22條性自主決定權，爰裁定停止審判，聲請司法院大法官解釋。

二、刑法第239條規定侵害憲法性自主決定權及人身自由之保障

刑法第239條（下稱系爭條文）在基本權的干預上可以分為兩個部分，首先是其作為「行為規範」，一般性的課與人民「不得通姦、相姦」之義務，此種單純的禁止本身已屬獨立的基本權干預；其次是其規範如違反上開誡命之人，需科處1年以下有期徒刑之刑罰，即係作為「制裁規範」干預人民之人身自由。而在基本權干預的違憲審查上，系爭條文規定作為行為規範與制裁規範，均須通過憲法的檢驗。故除作為行為規範限制人民權利需有正當之目的及合乎比例原則之限制手段外，其課與之制裁效果亦須通過比例原則之檢驗。蓋違反行為規範之制裁並非必然是刑罰，立法者亦可採用其他手段，如行政罰、民事賠償或其他民事制度上課與不利益的方式作為制裁。故其刑罰手段的選用，本身亦必須符合比例原則的檢視。

而系爭條文作為行為規範干涉人民憲法第22條性自主決定權，作為制裁規範干涉人民憲法第8條之人身自由權。其中作為行為規範干涉憲法第22條性自主決定權部分，業經鈞院以司法院大法官釋字第554號解釋肯認刑法第239條規定確實限制有配偶之人與第三人間之性行為自由（鈞院大法官釋字第554號解釋解釋理由書第3段），應無疑義。又刑罰作為制裁規範，如以有期徒刑之自由刑作為其效果，本身即構成對於憲法第8條保障人身自由之剝奪，此迭經鈞院解釋在案（鈞院大法官釋字第476號解釋、第544號解釋、第551號解釋、第594號解釋、第646號解釋、第669號解釋、第777號解釋參照），刑法第239條規定法定刑為1年以下有期徒刑，並無選科拘役、罰金刑之可能，顯然構成對於人身自由之干涉，釋字第554號解釋並未提及，應有疏漏。

三、審查基準部分

（一）就行為規範部分，應至少適用中度審查基準

1. 系爭規範干預性自主決定權

憲法對於性自主決定權之保障，乃係因性行為自由與個人之人格有不可分離之關係，得自主決定是否及與何人發生性行為（鈞院大法官釋字第554號解釋解釋理由書第1段參照）。故性行為自由係人格權保障之一環，而受憲法第22條之保障，應屬至明。而依據憲法第23條之規定，國家對於人格權並非不得干涉，然其審查基準自須考量所涉及人格權之領域是否涉及人格自主決定的核心內容而定。

2. 系爭規範以廣泛禁止的方式干預性自主決定權，現實上造成積極要求人民與特定人為性行為或全面禁止性行為之效果，應至少採取中度審查。

性行為自由依第554號解釋，其內涵係包含「是否」及「與何人」發生性行為。性行為係屬個人私密領域，亦屬個人對於親密關係之社會連結的重要決定，如國家強制人民「積極」與他人進行性行為，或「強制他人必須與特定人」進行性行為，此種積極性的干涉對於個人自我決定之權利甚鉅，危害個人自主人格發展程度甚高，自應為嚴格之審查乃至於完全禁止。然而若係消極的禁止人民在特定的時間、空間為性行為，或禁止人民與特定的對象進行性行為，則對於人民之性自主決定權侵害程度即屬較低。蓋此種禁止依然容許人民得於其他的時間、地點與其他對象自主決定是否及與何人進行性行為，並未完全剝奪其性自主決定之自由。故此種規範僅需有憲法上正當之目的，並以合乎比例原則的方式進行限制，自非法所不許，現實上我國也存有諸多類似規定，如刑法第227條規定禁止人民與未滿一定年齡之人為性交行為、刑法第230條規定禁止人民與一定親等內之血親性交、刑法第234條規定禁止人民意圖供人觀覽而公然為猥褻之行為，另社會秩序維護法、兒童及少年性剝削防制條例亦有關於性交易禁止之規定。然而上開規定均僅係禁止人民在特定的場合（公然），或禁止與特定對象（年齡、親等），或禁止以特定的交易模式（性交易）進行性行為的消極規定。在此範圍之外，人民仍得享有性行為自由。

刑法第239條形式雖然與上開規定類似，都是禁止人民與特定對象發生性交行為，然而僅需稍加注意即可發現，刑法第239條的禁止範圍，依照現行穩定的實務見解，係禁止人民「除與配偶以外之一切異性為性器接合之性交行為」。此種禁止形式上是消極的禁止，但其禁止的範圍包含除了配偶以外的一切異性，已經近乎達到使人民僅得與配偶進行性行為之程度（此應亦是立法之本旨）。故此種消極禁止，已達到使人民僅能選擇不進行性行為，或與特定人（即配偶）進行性行為之程度。如此的消極禁止，高度可能已經達到因「量變造成質變」，而發生類似於積極干涉的程度的效果。此種禁止既然造成類似於積極干涉之效果，自不應仍以第554號解釋所使用之寬鬆之審查基準進行審查，其對於人民性自主決定權的干涉遠高於上開刑法第227條、第230條及性交易規定之程度，至少應以中度審查基準進行檢驗。

3. 保障婚姻家庭為系爭規範之目的，並非降低審查基準之理由

至於554號解釋似乎以國家對於婚姻、家庭維繫的保護義務做為降低審查基準之理由，此種論述方式並不合理。現實上多數刑罰規範都可以藉由其保護的法益，連結至一般人民的基本權利維護，如鈞院大法官釋字第669號解釋中也提到槍砲彈藥刀械管制條例的規範，其目的在於保護人民的生命、身體、自由與財產安全（鈞院大法官釋字第669號解釋解釋理由書第2段參照）。此等目的的審查，應係決定審查基準後在規範目的部分確認規範所追求的目的是否合乎審查基準之要求，而非反過來以規範目的影響審查之基準。況且如果依據這樣的論述框架，第669號解釋中槍砲彈藥刀械管制條例所欲保護的人民生命、身體法益，其重要性顯然相較於抽象的婚姻家庭維繫更為重要與迫切，然而第669號解釋中，此等法益的保護義務卻沒有成為降低審查基準的理由，第669號解釋依然維持嚴格審查的基準，僅將上開對於人民生命、身體的保護義務做為規範之正當目的。聲請人認為，鈞院於第554號解釋所使用的架構顯有雙重評價而混淆審查次序之疑義。國家對於婚姻、家庭維繫的保護義務僅係規範之目的，而非降低審查基準之理由，第554號解釋應予變更。

（二） 制裁規範部分，依鈞院過往關於刑罰制裁規範之審查先例，應適用嚴格審查基準

限制人身自由之刑罰，嚴重限制人民之基本權利，係屬不得已之最後手段。立法機關如為保護合乎憲法價值之特定重要法益，並認施以刑罰有助於目的之達成，又別無其他相同有效達成目的而侵害較小之手段可資運用，雖得以刑罰規範限制人民身體之自由，惟刑罰對人身自由之限制與其所欲維護之法益，仍須合乎比例之關係，尤其法定刑度之高低應與行為所生之危害、行為人責任之輕重相符，始符合罪刑相當原則，而與憲法第23條比例原則無違。此迭經鈞院大法官以釋字第544號解釋、第646號解釋、第669號解釋、第777號解釋說明甚詳，此為鈞院近年對於自由刑之刑罰規範一致之審查基準，本案關於制裁規範部分，自應遵循鈞院以上開解釋先例建立之嚴格審查基準進行審查。且釋字第544號解釋對於自由刑使用之相當性更有精準的闡釋，認為自由刑既涉及對於人民身體自由之嚴重限制，除非必須對其採取強制隔離施以矯治，方能維護社會秩序時，其科處始屬正當合理（鈞院大法官釋字第544號解釋解釋理由書第2段參照）。而第646號解釋雖承認立法機關基於其功能、組織與決定程序，有相當之決定空間，但亦認為立法機關必須提出合乎事理且具可支持性的預測，方能通過司法違憲審查（鈞院大法官釋字第646號解釋解釋理由書第1段參照），可見在關於系爭刑罰規範是否符合上開審查基準之舉證責任，應由立法者負擔。苟若立法者未能提出合乎事理且具可支持性的證據說明系爭規範的適當性、必要性與相當性，則應為對立法者不利之認定。

本件刑法第239條規定，其法定本刑為1年以下有期徒刑，自屬上開所稱限制人民人身自由之自由刑，而應適用上開鈞院之解釋先例所建立之嚴格審查基

準。亦即，系爭規範所追求之目的必須是「保護合乎憲法價值之特定重要法益」，其手段必須有助於目的達成，且無其他相同有效達成目的而侵害較小手段可諮運用。其手段與目的間須合乎比例之關係，且必須系爭規範對人民採取強制隔離施以矯治，方能維護社會秩序時，其手段方屬合理正當。對於上開要求是否達成，應由立法者負擔舉證責任，立法者須提出合乎事理且具可支持性的證據證明其達成上開要求。

四、系爭規範並非保障合乎憲法價值之特定重要法益

系爭規範之目的在於維持作為社會形成與發展基礎之婚姻與家庭制度，考量婚姻制度植基於人格自由，具有維護人倫秩序、男女平等、養育子女等社會性功能，不僅使夫妻在精神上、物質上互相扶持依存，並延伸為家庭與社會之基礎，故由國家制定相關規範約束夫妻雙方互負忠誠義務（鈞院大法官釋字第554號解釋理由書第1段、第2段參照）。於釋字第554號解釋作成時，鈞院大法官認為立法機關就「當時」對夫妻忠誠義務所為評價無違社會一般人通念，而人民遵守此項義務規範亦非不可期待，而認可上開之立法目的具有正當性（鈞院大法官釋字第554號解釋理由書第3段參照）。

然而上開解釋作成於民國91年12月27日，距今已逾17年，上開大法官對於「當時」社會通念之社會事實認定，已經發生重大變化。社會上對於個人之情感與性自主權意識逐漸建立，對於多元之情感模式之尊重亦成通念，鈞院大法官亦於106年5月24日作成釋字第748號解釋，認定民法未保障同性婚姻之結婚自由牴觸憲法之規定，足見我國之社會與法秩序對於婚姻及家庭之認知已經有大幅度的變動，上開釋字第554號解釋之社會事實基礎已經不復存在。婚姻從所謂維繫社會、繁衍之基本單位此等承載高度社會義務意義之觀念，逐漸成為攸關維護人格健全發展與人性尊嚴之個人結婚自由。固然婚姻之忠貞性仍然是被普遍肯認之道德規範，但性行為畢竟是高度私人領域之事務，是否適宜以刑罰作為道德規範的確保，即非必然。如上所述，現今社會已經廣泛接納高度個人主義之個人性自主權之意識，社會上是否依然存在將「婚外性行為刑罰化」之共識、通念，實非無疑。而如果「婚外性行為刑罰化」是一個具有高度爭議性的道德觀念議題，則以部分社會成員（不論成員是多數或少數）之道德價值觀念一般性的刑罰化，以刑罰的方式強迫全體社會成員一體遵行，是否能認為屬於正當之立法目的，即顯有疑義。

與我國社會風俗、文化觀念高度相近，同為東亞文化圈之韓國，其憲法院亦於2015年2月26日以2009Hun-Ba17號判決認定該國之通姦罪牴觸該國憲法（參見附件一）。其於判決理由即載明：「性行為及愛情是私人的事務，不應該受刑罰之管制，雖然通姦行為是不道德的，並違反婚姻忠貞，依然不應該以刑事法律處罰。」因其認為韓國社會已經改變成為個人性自主利益高於性道德和家庭的社會利益的社會，而因社會對於社會結構、婚姻、性和性自主的認同改變，社會上已經不存在將通姦罪刑罰化的共識。而個人的性生活本質上屬於私

密的私人領域，應該由其自主決定，避免國家的介入與管制。刑罰應作為最後的手段。是以成年人間的合意性關係，應屬於自由的個人領域。如果國家介入且處罰應屬於性道德與社會秩序領域的私人性行為時，即會構成對性自主決定權的侵害（參見附件一，V.A.(3).①、②）。我國之社會風俗與文化觀念均與韓國社會有其相似性，上開韓國憲法法院對韓國社會變遷的理解，亦與我國社會近年的變遷相符，實屬東亞社會文化的共同變遷途徑。是在現今社會不存在通姦刑罰化的通念或共識之社會事實之情形下，以此社會部分成員之道德觀念作為刑罰之立法目的，應難認為符合「合乎憲法價值之特定重要法益」之要求。

五、系爭規範所採用之手段無法通過憲法第23條之檢驗

（一）系爭規範無助於其立法目的之達成

1. 通姦罪對已經發生破綻之婚姻並無維繫之積極功能

本件既係涉及刑罰規範，而構成對於人民人身自由之侵害，自應適用鈞院於過往解釋所建立之嚴格審查基準，已如前述。且對於規範有無助於目的之達成，立法者並不享有推定之利益，而應由立法者積極舉證證明系爭規範確實有助於目的之達成，提出合乎事理且具可支持性的證據說明系爭規範的適當性、必要性與相當性，合先敘明。

而系爭規範對於已經發生之通姦行為，沒有任何維繫婚姻存續之功能。因通姦罪在我國刑法典為告訴乃論之犯罪，必以他方已經發現並提起告訴始有適用之可能，而當雙方的婚姻關係已經發生其中一方與他人通姦之行為，且為他方所得知並提起告訴時，雙方的婚姻關係即早已經產生嚴重的破綻。此時系爭規範對於雙方已經發生破綻之修補，並無任何積極的功能，相反地，系爭規範只是提供婚姻親密關係中受損害之一方一個報復他方或索取賠償之武器。在提起告訴前之蒐證階段，婚姻關係中的他方即有可能使用如未得同意之錄音、錄影、以可能提起訴訟向通姦人或相姦人索取賠償、閱覽他方之通訊或跟監等其他手段進行蒐證，姑且不論上開蒐證行為之適法性，此等行為均僅會造成婚姻破綻進一步的擴大。於告訴提起後，在訴訟上的攻防與對抗，亦對於婚姻的維繫難有幫助，反而使雙方修補婚姻破綻之可能性更為降低。對於已經發生破綻的婚姻是否要修補或維持，均是個人之自主選擇，並無良窳之別，但系爭規範既然目的在於維繫婚姻及家庭制度，則自不能使其功能在於報復與作為請求損害賠償之武器，而無任何積極之維繫婚姻家庭功能。至少就已經發生之通姦行為，系爭規範並不具備達成其立法目的所需要的功能。

2. 通姦罪作為一般預防的嚇阻效果並無統計上之依據

是以系爭規範作為目的在於維繫婚姻與家庭制度之刑罰規範，其唯一的機能僅在於一般預防之事前嚇阻效果。但此種嚇阻效果究竟是否確實存在，亦是高度可疑的。韓國憲法法院在此議題上將通姦行為區分為有感情基礎與無感情基礎之通姦行為進行討論，其認為在有感情基礎的通姦行為，建基於情感與信任之婚姻關係顯然已經受到破壞，此時是否有以對於處罰的恐懼來維持已經受

到破壞的婚姻之必要性已有可疑，而也難以認為刑事處罰對此種通姦行為有何嚇阻效果，行為人高度可能依然進行通姦行為。而在無感情之通姦行為，自社會中廣泛存在的性交易觀察，顯然也難以證明通姦罪有何嚇阻效果（見附件一，V.A.(3).③）。故以刑罰來嚇阻通姦行為，其效用是可疑的，而且我們也欠缺相關的實證研究基礎證明。且在廢除通姦罪的各國中，也沒有任何統計顯示廢除通姦罪會導致性道德秩序敗壞或離婚率上升（見附件一，V.A.(3).③第5段）。

3. 韓國廢除通姦罪後，對於該國離婚率並無任何顯著影響，更可證明通姦罪對於婚姻家庭維繫並無實證上之關聯性。

現實上我們也可以從韓國於2015年廢除通姦罪的例子來觀察，韓國自2015年廢除通姦罪，時間距今不遠，考量韓國與我國同處於東亞文化圈，其社會對於通姦罪廢除的真實狀況，顯然高度可以作為我國對於廢除通姦罪效果預測的參考。而自韓國統計廳關於離婚率的統計資料看出，所謂通姦罪可以維繫婚姻、家庭制度，完全沒有任何統計上的證明。依據附件二所示的韓國統計廳對於2010年以來離婚率的統計資料，可發現2015年通姦罪廢除的決定，對於韓國離婚率並沒有產生任何顯著的影響。整體而言，離婚率自2015年以來尚且下降。韓國自2010年至2014年之離婚率均為2.3%，2015年至2018年之離婚率均為2.1%，足見2015年通姦罪之廢除，並未造成對於韓國婚姻家庭制度可見之影響。所以所謂「通姦罪具一般預防功能，於信守夫妻忠誠義務使之成為社會生活之基本規範，進而增強人民對婚姻尊重之法意識，及維護婚姻與家庭制度之倫理價值，仍有其一定功效」的預測，顯然與客觀的統計事實相悖，流於直觀想像，欠缺客觀證據可以支持，立法者顯然不能單以這種直觀而欠缺佐證的臆測作為其設立刑罰的基礎。應認立法者並未提出合乎事理且具可支持性的論據，系爭規範無法達成其所追求的目的，應屬昭然。

4. 通姦罪無助於維繫婚姻家庭之立法目的

綜上所述，系爭規範顯然欠缺規範人民行為之功能之積極效果。其實婚姻情感信賴基礎的破壞，往往發生於通姦行為之前，通常是夫妻雙方情感基礎已經出現破綻，才會進而發生與配偶外之人的感情或進一步的通姦行為。通姦行為往往是婚姻情感信賴基礎破壞的結果，而非原因。系爭規範無法協助當事人維持情感與信賴的基礎，而在透過嚇阻的方式讓當事人出於恐懼維持已經發生破綻的婚姻部分，韓國廢除通姦罪後的離婚率統計亦顯示其並無任何效果。最終通姦罪僅在通姦行為發生後，授予他方攻擊通姦人與相姦人之武器。而這樣的規範結果，顯然完全無助於婚姻家庭的維持。是以刑罰處罰通姦或許是直觀的反應，但系爭規範藉由處罰來表彰的社會道德意義，其實遠遠大於「維繫婚姻家庭」的功能，統計上亦無任何實際的效果，故系爭規範實欠缺對於其立法目的之適當性。

（二）系爭規範之功能亦能藉由民事管道達成，並非最小侵害手段

1. 通姦行為在我國民事、家事事件上本即有課予高度之不利利益

按因故意或過失，不法侵害他人之權利者，負損害賠償責任。故意以背於善良風俗之方法，加損害於他人者亦同。不法侵害他人基於父、母、子、女或配偶關係之身分法益而情節重大，被害人雖非財產上之損害，亦得請求賠償相當之金額，此為我國民法第184條第1項及第195條第3項所明定。而通姦、相姦之足以破壞夫妻間之共同生活而非法之所許，此從公序良俗之觀點可得斷言，對於配偶之他方應構成共同侵權行為。婚姻係以夫妻之共同生活為其目的，配偶應互相協力保持其共同生活之圓滿安全及幸福，而夫妻互守誠實，係為確保其共同生活之圓滿安全及幸福之必要條件，故應解為配偶因婚姻契約而互負誠實之義務，配偶之一方行為不誠實，破壞共同生活之圓滿安全及幸福者，即為因違反婚姻契約之義務而侵害他方之權利。與夫妻之一方相姦，足以破壞夫妻間共同生活之圓滿與家庭之幸福，而非法之所許，因此對於配偶之他方自屬故意以違背善良風俗之方法，加損害於人，為相姦之第三人，對該另一方之配偶構成侵權行為，其受害一方之配偶精神上自受有痛苦，得請求非財產上之損害賠償，此為最高法院55年台上字第2053號民事判決著有明文，亦為我國民事實務穩定之見解。又民法第1052條第1項明定：「夫妻之一方，有下列情形之一者，他方得向法院請求離婚：...二、與配偶以外之人合意性交。」第2項亦明定：「有前項以外之重大事由，難以維持婚姻者，夫妻之一方得請求離婚。但其事由應由夫妻之一方負責者，僅他方得請求離婚。」是以通姦之一方將承擔他方得取得向法院訴請離婚之形成訴權之危險，並在主張民法第1052條第2項離婚事由時，可能因其對於婚姻破綻有較高度之可歸責性，而不能主張離婚。是以通姦或相姦之行為人，在財產法上可能承擔高額的慰撫金損害賠償請求；在身分法上，通姦之行為人將在離婚訴訟中立於不利之地位，除他方可能可以取得訴請離婚之形成訴權外，通姦之一方欲主動請求離婚時亦可能受限於其較可歸責之地位而無法主張。

2. 通姦罪近年在我國實務上近乎全部均得易科罰金，與民事賠償管道之嚇阻效果高度重疊

而系爭規範為法定最重本刑1年以下有期徒刑之輕罪，在我國刑事實務上絕大多數均判處得易科罰金之刑度，而我國自101年以後全國地方法院之通姦罪及相姦罪，僅1件判處不得易科罰金之刑度（臺灣臺南地方法院105年度簡上字第59號判決），且該判決經上訴二審後改判得易科罰金之刑度（臺灣高等法院臺南分院106年度上易字第104號判決）。而全國高等法院僅有臺灣高等法院高雄分院曾以102年度上易字第545號判決不得易科罰金之刑度確定。是全國自101年以來各級法院之通姦罪及相姦罪案件，僅有1件判決不得易科罰金之罪確定之案例；自103年迄今已逾5年，未曾有不得易科罰金之通姦罪或相姦罪判決確定，此有本院統計室提供之統計資料及相關判決可資參照（見附件三）。是以在刑事實務之操作上，通姦、相姦罪之處罰有高度可能得以罰金替代之。如此相當於財產上不利益之嚇阻效果，與前述民事救濟管道造成之嚇阻效果，似未能有顯著之區別。

3. 通姦行為本身即伴有高度社會連結的破壞之不利益，通姦刑罰並非阻止通姦行為之主要阻力

又得易科罰金之自由刑並非絕無一般預防之嚇阻效果，亦非所有類型的易刑處分均可以由民事賠償達到類似的嚇阻效果。必須在當事人從事法所禁止行為被查獲時，除國家給予的刑事處罰外，不會因其從事禁止行為而有行為以外之明顯立即的不利益。如竊盜、傷害、酒駕等有可以易科罰金刑罰規定之犯罪，若國家不對該等行為施以處罰，行為人上開行為縱然經公權力機關查獲，亦不會單純因被查獲而有任何之社會生活上直接的不利益，此時處罰的一般預防嚇阻效果即屬必要；而民事賠償若無法使其行為的損害可能大於行為利益，民事賠償亦不能有取代刑事處罰之功能，如竊盜等財產犯罪中，在完全填補損害的民事法原則下，當事人為財產犯罪的利益期望值顯然為正值，因縱然遭查獲，其亦僅係回歸無利得亦無損害之狀態。故民事賠償在該等類型的犯罪中，並無替代刑罰的嚇阻效果。

然而通姦與上開狀況並不相同，在通姦行為遭查獲的同時，近乎必然伴隨著行為人原有婚姻關係的重大破毀，行為人原有的婚姻家庭社會連結將發生巨大的衝擊與改變。此種不利益的存在本身就是行為人在進行通姦行為前最主要的阻力，而此種婚姻家庭維繫的成本並不會因為通姦罪的存否而有任何改變。亦即，縱然通姦罪不復存在，亦不會發生「通姦行為不會有任何不利益」的行為誘因。縱無通姦罪的刑罰規範，行為人在通姦行為曝光時，依然必須承受婚姻家庭社會連結衝擊的重大不利益，故行為人對於維繫其原有婚姻、家庭的社會連結的意願，才是主要避免通姦行為的動力，而非刑罰的嚇阻。

又通姦行為在我國民事賠償實務上，法院酌定之慰撫金金額高出刑罰易科罰金的金額，所在多有，故通姦現實上的主要成本，早已經在於民事的賠償與離婚請求的不利益上，而非刑事訴訟的處罰。故在沒有任何實證研究可以證明通姦罪之存在能在民事損害賠償與離婚制度以外產生任何嚇阻效果，而前述民事管道能與系爭規範達到同等效果之情形下，難認系爭規範以刑罰作為嚇阻人民從事通姦、相姦行為之手段，為侵害最小之手段。

（三）系爭規範並非緊密剪裁之規範，未排除已經別居或婚姻有重大破綻之配偶，而有含蓋過廣之疑義

現行通姦罪處罰之範圍係所有有配偶之人與第三人為性器接合之性交行為，均為法律所處罰之範圍。此種規範模式，並未排除現實上已經長期別居而並未共同經營生活之情形。但在夫妻雙方已經因現實上無可回復之婚姻破綻而別居時，因我國民法關於離婚係採「消極破綻主義」，亦即可能存在婚姻已經發生無可回復之破綻，但因不可歸責或較不可歸責的一方無意離婚，而使雙方婚姻關係必須繼續存在的情形。當此種情形發生時，夫妻雙方因婚姻破綻現實上並無性行為之可能，則國家在此等情形下，實質係以刑法第239條規範，完全禁止行為人從事性交行為，而此等狀態在我國民法離婚規定下，亦可能永無解消之

日。

刑法第239條規定係以維繫婚姻、家庭制度為目的，但其對於已經發生破綻之婚姻並無任何修補婚姻破綻之效果，已如前述。然而刑法第239條依然並未排除現實上已經別居或婚姻關係存有重大破綻之配偶，而造成在已經發生破綻的婚姻關係中，有意離婚之一方因無法脫離婚姻關係，現實上完全遭剝奪其性自主權。刑法第239條在此所扮演的角色，並無任何積極維護婚姻家庭的功能，而僅是不合比例的完全剝奪已無意維繫婚姻一方的性自主權作為現實上的處罰。此種永無期限、全面性的剝奪性自主權，且無任何維繫婚姻家庭功能的刑罰設計，顯然絕非侵害最小之手段。故系爭規範未在要件上排除別居或婚姻關係有重大破綻之配偶，顯然已有含蓋過廣之嫌，而牴觸憲法第23條之規定至明。

（四）系爭處罰效果與其保護之目的不相當

最後，縱或鈞院依然認刑法第239條係侵害最小之維護婚姻家庭之手段，其自由刑之處罰方式選擇，依然無法通過狹義比例原則的檢視。誠如鈞院在第544號解釋所揭櫫的標準，認為自由刑因涉及對人民身體自由之嚴重限制，除非必須對其採強制隔離施以矯治，方能維護社會秩序時，其科處始屬正當合理。然而通姦行為縱然在道德上可受非難，但其終究僅係個人道德的展現及夫妻雙方私法忠誠義務的履行與否。此等行為是否已經達到鈞院所揭櫫「必須採強制隔離施以矯治，方能維護社會秩序」的自由刑罰標準，殊值可疑。然而於5年內全國所有的通姦、相姦案件中，均無任何不得易科罰金之判決確定，已如前述。故在近年我國司法實務現場，顯然司法機關在近5年所有的通姦、相姦個案中，均不認為通姦行為有受強制隔離施以矯治之必要。故刑法第239條之自由刑處罰規定，顯然已經超越其所維護目的所需，而無法通過狹義比例原則的檢視。

六、 結論

綜上所述，在近10餘年之現代社會對於家庭之結構、性自主意識之觀念變遷後，社會上對於「通姦刑罰化」並不存在統一的共識或通念，在有爭議的道德議題上將部分人民道德觀刑罰化而適用於全體，並非保障合乎憲法價值之特定重要法益。系爭規範無助於維繫婚姻家庭制度此一目的之達成，亦無實證支持其較諸民事損害賠償制度、離婚制度有何更有效之嚇阻效果，並非最小侵害之手段。是刑法第239條規定違反比例原則的侵害人民之人身自由與性自主決定權，應屬違憲。鈞院大法官釋字第554號解釋，並未審酌系爭規範對於憲法第8條所保障人身自由之侵害，且對於憲法第22條保障之性自主權亦未採取如同鈞院上開對於刑罰規範的審查標準，且第554號解釋所依據之社會事實已經發生重大變更，實有補充或變更之必要，爰聲請解釋。

此 致

司法院大法官

中 華 民 國 1 0 9 年 3 月 2 3 日

聲請人 何知鈞

附件
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2009Hun-Ba17

Adultery Case

Decision date: Feb 26, 2015

Final decision: Unconstitutional

Adultery Case

[27-1(A) KCCR 20, 2009Hun-Ba17 • 205, 2010Hun-Ba194, 2011Hun-Ba4, 2012Hun-Ba57 • 255 • 411, 2013Hun-Ba139 • 161 • 267 • 276 • 342 • 365, 2014Hun-Ba53 • 464, 2011Hun-Ka31, 2014Hun-Ka4(consolidated), February 26, 2015]

Requesting Courts: 1. Uijeongbu District Court (2011Hun-Ka31) 2. Suwon District Court (2014Hun-Ka4)

Requesting Petitioner: Park O-Mi (2014Hun-Ka4)

Petitioners: Park O-Soon, et al.

Underlying Cases: listed in the Appendix

Decided: February 26, 2015

Holding

Article 241 of the Criminal Act (enacted as Act No. 293 on September 18, 1953) violates the Constitution.

Reasoning

I. Introduction of the Case

The petitioners, who were prosecuted on a charge of adultery or fornication, filed the motion to request for the constitutional review on Article 241 of the Criminal Act, alleging the unconstitutionality of the aforementioned provision. After the motion was denied, the petitioners filed the constitutional complaint. The defendant of case 2011Hun-Ka31 was prosecuted for and was convicted of adultery at the trial court. Upon the appeal of the defendant, Uijeongbu District Court requested, *sua sponte*, for the constitutional review of Article 241 of the Criminal Act for reasonable doubts on the unconstitutionality of the aforementioned provision on August 26, 2011. The requesting petitioner of case 2014Hun-Ka4 was also prosecuted for and convicted of adultery at the trial court. The requesting petitioner appealed against the decision and filed a motion to request for the constitutional review of Article 241 Section 1 of the Criminal Act. Suwon District Court, the requesting court of this case, granted the motion and requested for the constitutional review on the aforementioned provision on March 13, 2014.

II. Subject Matter of Review

The petitioners of 2012Hun-Ba255 and 2013Hun-Ba161 and the requesting court of 2014Hun-Ka4 filed the constitutional complaints or requested the constitutional review on Article 241 Section 1 of the Criminal Act. Nonetheless, Article 241 Section 2 of the Criminal Act is inseparable from Article 241 Section 1 of the Criminal Act in that Section 2 of the provision

provides that adultery is a crime subject to victim's complaint and a spouse who condones or pardons the adultery cannot accuse his/her spouse of adultery. Accordingly, the subject matter of review is the constitutionality of Article 241 of the Criminal Act (enacted as Act No. 293 on September 18, 1953) and its contents are listed below:

Provision at Issue

Criminal Act (enacted as Act No. 293 on September 18, 1953)

Article 241 (Adultery) (1) A married person who commits adultery shall be punished by imprisonment for not more than two years. The same shall apply to the other participant.

(2) The crime in the preceding section shall be prosecuted only upon the accusation of the victimized spouse. If the victimized spouse condones or pardons the adultery, accusation can no longer be made.

III. Arguments of Petitioners and Reasoning of Request of Constitutional Review of the Requesting Courts

A. Arguments of Petitioners

The Provision at Issue restricts the right to sexual self-determination and privacy, violating the principle against excessive restriction. It is also against the principle of proportionality between responsibility and punishment to stipulate the punishment by imprisonment as the only statutory punishment. In addition, it violates Article 36 Section 1 of the Constitution in that the accusation of adultery assumes divorce, which results in the failure of family. The nature as a crime prosecutable upon a complaint would lead to the discrimination by violators' economic status; a violator whose spouse condones or pardons the affair would not be punished; and a spouse who filed a divorce suit is vested with the accusation of adultery, suggesting the violation of the principle of equality.

B. Reasoning of Request for Constitutional Review of the Requesting Court

The Provision at Issue has legitimate purposes that are the protection of good sexual culture and practice and the promotion of marital fidelity between spouses. Nonetheless, it fails to achieve the appropriateness of means and least restrictiveness for considering the reality where the public recognition has changed along with the propagation of individualism and sexual liberalism; the nature of sexual life which should not be subject to criminal punishment, but subject to sexual morality for self-governing of society; and little efficiency of criminal punishment against adultery. While the Provision at Issue hardly serves the public interests of protecting marriages and spousal obligation of faithfulness, it excessively restricts the right to sexual self-determination and to privacy through the punishment on the private sexual life, thereby loosing the balance of interests and violating the Constitution.

IV. Comparative Law and Precedents

A. Comparative Law

The global trend with regard to adultery is decriminalization. The crime of adultery was abolished in Denmark, Sweden, Japan, Germany, France, Spain, Switzerland, Argentina and Austria in 1930, 1937, 1947, 1969, 1975, 1978, 1990, 1995 and 1996, respectively.

B. Discussion for Revision

The Ministry of Justice suggested the abolishment of adultery crime in its revision draft of the Criminal Act preannounced on April 8, 1992, reflecting the global trend of decriminalization of adultery, the inappropriateness for law to intervene the individual sexual life belonging to the intimate domain of private life, the possibilities of misusing the accusation of adultery for threatening and alimony, the weakened effects as a means of criminal punishment as accusations are mostly canceled in the investigation or trial proceeding, little efficiency for deterrence or re-socialization, or the protection for family and women. Afterwards, the Minister of Justice finalized the Criminal Act Revision composed of 405 articles on May 27, 1992, embracing the opinion that it is premature to abolish the adultery crime. Instead, it suggested to reduce the statutory punishment by lowering the terms of imprisonment to 1 year or less and by adding fines less than 5,000,000 Won. Nevertheless, this final revision was not legislated.

C. Precedents

The Constitutional Court has decided that the Provision at Issue was not unconstitutional in the Decision of Case 89Hun-Ma82, September 10, 1990, with the dissenting opinion of Justice Han Byong-Chae and Justice Lee Si-Yoon (Incompatibility with the Constitution) and the dissenting opinion of Justice Kim Yang-Kyoon (Unconstitutional). The Decision of Case 90Hun-Ka70, March 11, 1993 followed the 89Hun-Ma82. Afterwards, the court opinion of the Decision of Case 2000Hun-Ba60, October 25, 2001 also maintained the decision of the 89Hun-Ma82, pointing out that the Legislature should consider the abolishment of adultery crime, with the dissenting opinion of Justice Kyon Sung. In the Decision of Case 2007Hun-Ka17, et al., October 30, 2008, the majority, consisting of the opinion of Justice Kim Jong-Dae, Justice Lee Dong-Heub, Justice Mok Young-Joon, and Justice Song Doo-Hwan (Unconstitutional) and the opinion of Justice Kim Hee-Ok (Incompatibility with the Constitution) found the unconstitutionality of the Provision at Issue. Nonetheless, it was decided that the Provision at Issue was constitutional as the quorum fell short of six persons required for a decision of unconstitutionality in the Constitution.

V. Judgment

A. Opinion of Justice Park Han-Chul, Justice Lee Jin-Sung, Justice Kim Chang-Jong, Justice Seo Ki-Seog and Justice Cho Yong-Ho (Unconstitutional)

(1) Article 10 of the Constitution promotes the right to personality and right to pursue happiness, assuming the right to self-determination. The right to self-determination connotes the right to sexual self-determination that is the freedom to choose sexual activities and partners, implying that the Provision at Issue restricts the right to sexual self-determination of individuals. In addition, the Provision at Issue also restricts the right to privacy protected under

Article 17 of the Constitution in that it restricts activities arising out of sexual life belonging to the intimate private domain.

(2) Legitimacy of Legislative Purpose

The Provision at Issue, which intends to promote the marriage system based on good sexual culture and practice and monogamy and to preserve marital fidelity between spouses, has a legitimate legislative purpose.

(3) Appropriateness of Means and Least Restrictiveness

① Change in Public's Legal Awareness

The marital fidelity of married people has been established by our traditional ethics as monogamy and marital fidelity between spouses have also been respected as ethical standards. Nonetheless, in recent years, the growing perception of the Korean society has changed in the area of marriage and sex with the changes of the traditional family system and family members' role and position, along with rapid spread of individualism and liberal views on sexual life. Sexual life and love is a private matter, which should not be subject to the control of criminal punishment. Despite it is unethical to violate the marital fidelity, it should not be punished by criminal law. Also, the society is changing into one where the private interest of sexual autonomy is put before the social interest of sexual morality and families from the perspective of dignity and happiness of individuals.

Accordingly, there is no longer any public consensus regarding the appropriateness of criminalization of adultery, which means the criminal punishment against sexual activities with a person except his/her spouse, along with the change of public recognition on social structure, marriage, and sex and the spread of an idea to value sexual self-determination.

② Appropriateness of Criminal Punishment

Whether to regulate certain acts for being illegal and constituting a crime by exercising the State' authority over criminal punishment or simply rely on moral law is a matter that inevitably varies by time and consensus depending on the Society and its members. Some in our domain of life should be left to morality although others are to be directly regulated by law. It is hardly possible to punish all unethical actions by criminal punishment.

Individuals' sexual life belonging to the intimate domain of privacy should be subject to the individual's self-determination, refraining from State's intervening and regulation, for its nature. The exercise of criminal punishment should be the last resort for the clear danger against substantial legal interests and should be limited at least. It belongs to a free domain of individuals for an adult to have voluntary sexual relationships, but it may be regulated by law when it is expressed and it is against the good sexual culture and practice. It would infringe on the right to sexual self-determination and to privacy for a State to intervene and punish sexual life which should be subject to sexual morality and social orders.

The tendency of modern criminal law directs that the State should not exercise its authority in case an act, in essence, belongs to personal privacy and is not socially harmful or in evident

violation of legal interests, despite the act is in contradiction to morality. According to this tendency, it is a global trend to abolish adultery crimes.

③ Effectiveness of Criminal Punishment

The interest to be protected by the Provision at Issue is the marital system based on monogamy. Yet, the Provision at Issue by no means can help maintain marriage life once the act of adultery occurs. Under the Criminal Act, adultery is prosecuted only upon the accusation of the victimized spouse, and an adultery accusation shall not be made unless the marriage is void or divorce action is instituted. For this reason, existing families face breakdown with the invoking of the right to file an accusation. Even after cancellation of the accusation, it is difficult to hope for emotional recovery between spouses. Therefore, the adultery crime can no longer contribute to protecting the marital system or family order. Furthermore, there is little possibility that a person who was punished for adultery would remarry the spouse who had made an accusation against himself/herself. It is neither possible to protect harmonious family order because of the intensified conflict between spouses in the process of criminal punishment of adultery.

All considered, protecting marital system through criminal punishment on adultery is nothing more than preventing a married person from committing adultery beforehand for fear of criminal punishment. However, it is doubted whether such psychological deterrence is effective.

The motivation of adultery may be classified into two cases: the case arising out of affection or the case not arising out of affection. In the former case, the marriage relationship based on the affection and trust between spouses would have been broken, implying the question in terms of necessity of maintaining the broken marriage by fear through punishment. For this case, the efficiency of deterrence of adultery would be hardly recognized because they would commit adultery despite of criminal punishment. Even the latter case hardly expects the deterrence effects of criminal punishment in adultery for the various types of prostitution and its public recognition. We do not have the empirical evidence to prove the general deterrence effect for adultery through the empirical analysis of law and practice, neither.

The rate of punishing adultery has been dramatically decreased. The statistic suggest that the filing and accusation of adultery have been decreased, indicating that the rate of prosecution in custody is less than 10% of prosecution for adultery and most cases are concluded with no power to prosecute or dismissal of prosecution because of cancellation of accusation during investigation or trial. It implies that the punishment rarely functions.

There is a view to concern the disorder in sexual morality or increase of divorce due to adultery in case of abolition of adultery. Nonetheless, any statistics to support the disorder of sexual morality or the increase of divorce after the abolition of adultery is not found in countries where adultery is repealed. Rather, the degree of social condemnation for adultery has been reduced due to the social trend to value the right to sexual self-determination and the changed

recognition on sex, despite of the punishment of adultery. Accordingly, it is hard to anticipate a general and special deterrence effect for adultery from the perspective of criminal policy as it loses the function of regulating behavior.

On the other hand, the adultery of a spouse would conform to a ground of judicial divorce (Article 840 Item 1 of the Civil Act), and a person who committed adultery has a duty to compensate the victimized spouse for the property and psychological damages (Article 843, 806 of the Civil Act). The Court may give a person who committed adultery disadvantages in deciding custody and the restriction or exclusion of visitation rights.

It is doubtful whether the criminal punishment can protect the faithfulness between spouses, besides the civil compensation as stated above. The protection of the obligation to remain faithful between spouses would be effectively achieved by ethics of individuals and society, and affection and trust between spouses, instead of criminal punishment.

It is true that the existence of adultery crimes in the past Korean society served to protect women. Women were socially and economically underprivileged, and acts of adultery were mainly committed by men. Therefore, the existence of an adultery crime acted as psychological adultery deterrence for men, and, furthermore, enabled female spouses to receive payment of compensation for grief or divided assets from the male spouse on the condition of cancelling the adultery accusation.

However, the changes of our society diluted the justification of criminal punishment of adultery. Above all, as women's earning power and economic capabilities have improved with more active social and economic activities, the premise that women are the economically disadvantaged does not apply to all married couples. Additionally, as the Civil Act was revised on January 13, 1990, both husband and wife have become entitled to claim for division of assets in case of divorce, and the parental authority is equally guaranteed to men and women without discrimination. In other words, the wife's right to claim property division is now recognized under the Civil Act, and family chores of housewives are recognized as contribution to asset formation. This has established a system that provides women with living foundation after divorce, the right to claim damages through receipt of compensation for grief in case of divorce, and the feasibility of raising children through claim for child support.

Even though it is assumed that the economic status of married women is inferior to that of married men, the existence of an adultery crime does not necessarily protect the female spouse. Divorce is a prerequisite for filing accusations for adultery, so married women without economic and earning abilities may rather be reluctant to filing accusations. As such, the female protective function of the adultery ban has weakened greatly.

Today's prohibition of adultery has come to punish only a very small number of adulterers, so it only massively produces potential criminals and restricts their basic rights but has become ineffective in protecting the marital system and duty to remain sexually faithful. The maintenance of marriage and family should depend on the free will and affection of individuals,

which should not be controlled by criminal punishment. Therefore, the Provision at Issue would be not an effective means to achieve the purpose to protect the marriage system based on monogamy and family orders.

④ Side Effects of Criminal Punishment

The adultery crime may be exploited for other purpose than to protect wholesome marital system and obligation to remain sexually faithful between spouses. It is only the spouse of the adulterer who can file or cancel accusations against the adulterer and fornicator, and the adultery crime is indictable upon an accusation. This means that whether the prosecutors will prosecute the case and the court will reject the indictment depends on whether or not the accusation is cancelled. The legal fate of fornicators would solely depend on the victimized spouse. As a result, filing adultery accusations or cancellation thereof is a means to facilitate divorce between spouses who are in effect facing breakdown as well as to blackmail socially prominent figures or temporarily delinquent housewives. It frequently leads to abuse of swindling money out of fornicators.

⑤ Sub-Conclusion

With the comprehensive considerations, the Provision at Issue, which punishes adultery for the good sexual culture and practice, the marriage system based on monogamy, and the marital fidelity between spouses, fails to achieve the appropriateness of means and least restrictiveness

(4) Balance of Interests

As stated above, it is difficult to see that the Provision at Issue can any longer serve the public interests of protecting the monogamy-based marriage system and the obligation to remain sexually faithful between spouses. Since the Provision at Issue excessively restricts people's sexual autonomy and privacy rights by criminally punishing the private and intimate domain of sexual life, the Provision at Issue can be said to have lost the balance of interests.

(5) Conclusion

Therefore, the Provision at Issue violates the Constitution for infringing on the right to sexual self-discrimination and secrecy and freedom of privacy under the principle against excessive restriction by failing the appropriateness of means and least restrictiveness and losing the balance of interests.

B. Opinion of Justice Kim Yi-Su (Unconstitutional)

I am of the opinion that the Provision at Issue is unconstitutional as the conclusion of the majority opinion, but with different reasons, as stated below:

(1) Case of a Person Who Committed Adultery

(A) A married couple shall endeavor to achieve the common purpose and value of life through cooperation and consideration within the community in terms of psychological, physical and economical combination. Marriage is a social system to establish, maintain and develop the marriage community.

We adopt the marriage system based on monogamy. Under monogamy, the essential nature of marriage would be the married couple's will to maintain their sexual cohabitation exclusively and sustainably. Married couples would enjoy the freedom of sexual cohabitation as self-realization with the burden of sexual fidelity for spouses, after the choice of marriage based on free and true will.

The essence of adultery is the intentional breach of sexual faith between spouses by a person who chose marriage based on his/her free will. Adultery committed by a married person would result in or threat marriage as it is against the nature of exclusiveness and continuity of sexual cohabitation.

The Provision at Issue intends to protect the marriage system based on monogamy through the promotion of sexual faith between spouses.

(B) The Provision at Issue restricts the right to sexual self-determination.

Nonetheless, the right to sexual self-determination of a married person, restricted by the Provision at Issue, has an inherent limitation that it should be exercised with the consideration of the exclusiveness and continuity of sexual cohabitation established by the self-determination to choose marriage. Adultery can be hardly justified by the right to sexual self-determination in that it is unethical beyond its inherent limitation.

Law can contribute to the effectiveness of the least morality to maintain social orders. Despite the various modes of immoral sexual deviation, including adultery, bestiality, promiscuity or incest, criminal law focuses on adultery for its punishment. It assumes adultery as the unethical deviation to destroy the marriage system based on monogamy and, further, harm peaceful orders of coexistence of the law community. In this sense, it coerces the prohibition of adultery for the promotion of the least morality.

(C) The legal interests protected by the criminal law include the most fundamental value for the existence of human beings as well as the specific and practical value which is necessary for social life. Therefore it would depend on the trend of entire legal orders and empirical perception of members of our society to decide whether certain behaviors should be regulated by the State's criminal punishment as the infringement of legal interests or should be regulated by moral rules, being subject to moral condemnation, reprimand, wrath or repentance.

The criminalization of adultery has been controversial since the Criminal Act was enacted. Since then, there have been arguments to abolish or repeal the adultery crime. The Constitutional Court has produced four precedents confirming its constitutionality. Nonetheless, there were always dissenting opinions to support its unconstitutionality. Especially in the fourth precedent, five Justices presented the opinion of unconstitutionality, including the opinion of incompatibility with the Constitution. Most criminal law scholars support the abolishment of adultery crime.

The modes of adultery can be roughly classified into three cases: a liable spouse to have extramarital intercourse merely for sexual pleasure despite his/her spouse (mode 1), a spouse

falling in love with a person more attractive than his/her spouse, being skeptical about his/her current marriage (mode 2), and a sexual relationship with new love under circumstances where the existing marriage is *de facto* dissolved, such as separation for a long time, despite the existing marriage has not been dissolved actually or a law suit/complaint for divorce has not been filed (mode 3).

In the case of mode 1 and 2, the adultery would be substantially criticized, compared to mode 3, and the existing marriage should be protected. For these cases, most people would agree that criminal punishment is still necessary.

Also, the general deterrence effects would be still recognized in mode 1 and 2 for the authority of criminal punishment based on the leaning effects of the punishment against adultery for a long time, the burden during the criminal procedure, including investigation and trial, for providing imprisonment as a sole statutory punishment, or concerns for the loss of job.

Further, adultery crime may be effective in leading the sincere regret or self reflection of a person who committed adultery. If a violator presented such regret or reflection, the accusation could be cancelled or nullified, recovering the broken marriage.

The criminalization of adultery can be useful in protecting a victim as the economically underprivileged even if the marriage would be dissolved. An economically underprivileged husband or wife may secure the means for life after dissolving the marriage by filing a claim for division of property or claim for alimony under the Civil Act with a claim for divorce. Nonetheless, the current system and practice under civil laws do not suffice in protecting the underprivileged. The justification of criminalization of adultery can still be found in protecting the economically underprivileged.

On the contrary, mode 3 of adultery is rarely reproachable or anti-social. In this case, the punishment of adultery would not contribute to the recovery or maintenance of marriage. It would be the excessive restriction on the right to self-determination to coerce *de facto* failed marriage couples into the nominal sexual faith by the authority of criminal punishment, despite little appropriateness or effectiveness.

The common legal sense of our society would consider that it is not appropriate to punish mode 3 of adultery as other modes just because the specious marriage legally exists.

In this regard, the Supreme Court recently held that the marital cohabitation, the essence of marriage, would not be retained if it is impossible to recover the marital cohabitation despite the marriage has not ended in divorce yet. Accordingly, it would not constitute torts to have affairs with a married person as it does not infringe on the marital cohabitation, interrupt the maintenance of cohabitation, or cause damages to infringe on the rights relating to marriage cohabitation (Supreme Court 2011Meu2997 en banc decision, November 20, 2014). It reflects the common legal sense, presenting that the State should not intervene the mode 3 of adultery for not being reproachable or anti-social as the mode 3 of adultery would not expect the sexual fidelity for the lack of the marriage cohabitation which is essential in marriage.

(D) Therefore, the criminal punishment against the mode 1 and 2 of adultery would not be the excessive restriction against the right to sexual self-determination as it is justified by the appropriateness and effectiveness of the punishment and the proper purpose to protect the fundamental orders of social ethics, including the marriage system based on the marital fidelity between spouses at the least degree.

On the contrary, the criminal punishment of mode 3 of adultery, which lacks condemnation and anti-sociality, should not be granted as an excessive punishment in that the extramarital affairs would not infringe on the marital fidelity or interrupt the marriage system in the case that the marriage is *de fact* dissolved.

(2) Case of a Participant of Adultery

Adultery requires a joint action of two persons: a married person who has a spouse and a participant. In punishing this type of crime, our criminal law may punish the two persons equally (in case of adultery), punish the persons under the different statutory punishment (in case of bribery), or punish just one person (in case of distribution, sale or lease of obscene materials). From the perspective of comparative law, a group of states of the U.S. punish a married person only, excluding a participant who does not have a spouse from punishment, among the states of the U.S. where adultery is criminalized, despite the punishment is nominal. Considering the attitude of our criminal law and the comparative law, it is not necessary to punish a married person who committed adultery and a participant, together, under the equal statutory punishment.

If a participant is married, the essence of the act would be indifferent from adultery in terms of violation of fidelity between spouses, except that the legal position of a person who committed adultery depends on the accusation which is the requisite to maintain the prosecution. As stated in case of a person who committed adultery, it would be unauthorized excessive punishment for the Provision at Issue to punish fornication of a participant whose marriage is *de facto* dissolved.

The entire structure of our criminal law indicates that the state does not regulate sexual activities between unmarried people, reaching at a certain age, based on free will, whereas criminalizing adultery. Our criminal law also states adultery in the chapter of 'crime regarding sexual culture and practice', which relates to social interests, whereas it indicates adultery for an offense subject to accusation and it allows the substantial disposition of legal interests through connivance or pardon.

The essence of adultery is the intentional breach of sexual faith between spouses by a person who chose marriage based on his/her free will.

Considering the essence of adultery, an unmarried person who fornicated with a married person (including unmarried, divorced, or separated by death) would not assume the existence and violation of sexual fidelity between spouses and the duty regarding such fidelity with regard to a person who committed adultery and his/her victimized spouse. Therefore, the State should

refrain from the control and regulation over the exercise of the right to sexual self-determination regarding whom and how to have sexual activities of an unmarried participant of adultery for the nature of the right and freedom. The right to sexual self-determination of an unmarried participant of adultery should be protected more broadly, compared to a married person who committed adultery.

It results in the conclusion that the exercise of criminal punishment of the State should be refrained with regard to fornication of an unmarried participant of adultery. It would be sufficiently effective and enough to inquire into appropriate liability corresponding to the action through ethical or moral criticism or civil tort liability. The criminalization of adultery only means that the State settles the revenge against a spouse who committed adultery. It would be the unauthorized excessive punishment as it excessively restricts the right to sexual self-determination of an unmarried participant of adultery.

Provided, an unmarried participant who fornicated with a married person leads to fornication by active provocation or temptation, beyond the mere knowledge of adultery of a person who committed adultery, it would be justifiable to exercise the State's authority for criminal punishment for its significant reprehensibility and anti-sociality, in that it threatens the other's marriage by malicious and intentional harm. In this case, the exercise of criminal punishment against adultery would be constitutionally granted in that the significance of public interests to be achieved by criminal punishment of fornication, exceptionally, overweighs the disadvantaged private interests to restrict the right to sexual self-determination of an unmarried participant of adultery.

(3) Conclusion

Adultery or fornication where a person who committed adultery and a married participant of adultery do not assume the sexual fidelity for spouses due to the de facto dissolution of marriage, and fornication of an unmarried participant of adultery, except a case of active provocation or temptation, should be subject to ethical or moral criticism for its lack of reprehensibility or anti-sociality.

The Provision at Issue provides that all modes of adultery and fornication shall be uniformly punished without any consideration of singularities and specificities, according to the types of a person who committed adultery or fornication and specific styles of action. It would violate the Constitution for excessive exercise of State's criminal punishment authority in that it excessively restricts the right to sexual self-determination, overstepping its limited role in achieving the purpose and function of criminal punishment.

C. Opinion of Justice Kang Il-Won (Unconstitutional)

I consent to the conclusion of the majority opinion and the opinion of Justice Kim Yi-Su. Nonetheless, my opinion is supported by different reasons as stated below:

(1) Constitutionality of Prohibition and Criminalization of Adultery

Adultery of a married person becomes a major threat to monogamy and causes social problems including an abandonment of his/her spouse and family members. It justifies legal regulation despite adultery or fornication falls into the domain of intimate privacy according to the self-determination of individuals, if it destructively affects the marital relationship, beyond the level of ethics and morality.

It has been more than 60 years since the Provision at Issue was enacted. The general perception of sexual morality has dramatically changed according to the rapid change of our society, affecting the social meaning of the marriage system. There have been many cases where the criminal punishment of adultery has been misused to obtain financial benefits. Since adultery presumes the dissolution of marriage as it is an offense subject to accusation, it does not properly serve the legislative purpose to protect family. Most adultery cases are concluded by the cancellation of accusation during investigation or trial, implying the punishment function or deterrence effect has been significantly reduced. The global trend to abolish adultery crime reflects such reality.

Nonetheless, it is not confirmed that the Provision at Issue punishing adultery is significantly separated from the general perception of our society. The misuse of adultery in practices would be led by the side effects in that only imprisonment is provided for a statutory punishment. The issues surrounding the Provision at Issue, including the insufficiency to achieve the purpose to protect family and the decreased deterrence effect, would be resolved through the revision of the legislation. Such problems may be resolved by abolition of adultery crime as found in the comparative law study. Nonetheless, the Legislature should decide the legislative policy to resolve the problems.

A certain type of adultery or fornication may become a major threat to cause or likely cause the dissolution of marriage and family life. Accordingly, it would be agreeable that legal means is desirable for preventing adultery in advance. It would not be unconstitutional for the Legislature to adopt criminal punishment as sanction, in addition to sanctions other than criminal sanctions or regulation under civil laws, against adultery or fornication.

(2) Principle of Clarity

The elements of crime should be clearly stated in a provision of the Statute, which is the formal law. If a provision stating elements of crime is excessively abstract or vague and it is excessively broad or ambiguous in terms of substances and application, the principle of clarity is violated in that arbitral exercise of criminal punishment of the State would not guarantee the freedom and right of the people (2011Hun-Ba75, February 26, 2004). The circumstances precluding wrongfulness and prosecution conditions as well as the elements of crime shall be clearly stated in terms of meanings and requirements under the principle of clarity, providing the ground that the people subject to laws can predict the scope and limitation of the exercise of state authority.

Article 241 Section 2 of the Criminal Act provides that “if the victimized spouse condones or pardons the adultery, accusation can no longer be made” in the provision for the nature of an offense subject to accusation. The term of ‘condone’ implies the *ex ante* consent to adultery in that it means suggestion or inducement. The terms of ‘pardon’ implies the *ex post* consent to adultery in that it means forgiveness. If the victimized spouse condones or pardons the adultery, the adultery action is not subject to the criminal punishment. However, it is not clear whether the adultery is condoned or pardoned. It would not be easy to prove or admit the inner mind of the accuser, which is against the accusation, with regard to whether the person who accused his/her spouse for adultery condones prior to adultery or pardons after adultery.

The Supreme Court held that if the consent to divorce is clearly presented during the proceedings of the divorce suit or divorce by agreement, it would amount to the ‘condone’ because the will to maintain the marriage relationship is not found (Supreme Court 90Do1188, March 22, 1991; Supreme Court 2008Do3599, July 10, 2008, etc.). On the contrary, if a temporary and provisional decision for divorce is presented with conditions the other spouse is liable for the dissolution of marriage, despite a divorce suit is filed by a spouse or both spouses, it would not amount to the term of ‘condone’ (Supreme Court 89Do501, September 12, 1989; Supreme Court 2008Do984, July 9, 2009, etc.). If a civil tort suit is filed against a spouse and a partner of adultery, any illegality would not be constituted in a case where the marriage relationship is *de facto* dissolved and the third party has a sexual relationship with a spouse of the dissolved marriage. The legal relationship would be also applicable for a case that a divorce suit is not filed yet (Supreme Court 2011Meu2997 en banc decision, November 20, 2014).

With the comprehensive understandings of the cases, the clear consent to divorce would amount to the term of ‘condone’, whereas the provisional or conditional consent to divorce would not amount to the term of ‘condone’. Nonetheless, it is still unclear whether there is a clear consent to divorce or provisional or conditional express for divorce. It is also ambiguous whether adultery is committed whereas illegality is not founded, in that *de facto* breakdown of marriage would not assume the illegality of affair of a spouse and his/her partner of affair. If adultery is not founded, it would be uncertain how to interpret the precedents, providing that the clear consent to divorce only amounts to the term of ‘condone’, harmoniously. If adultery is not founded where the cohabitation of the married couples is irreparably dissolved, the citizens who are not experts in law could not predict the level of irreparable dissolution of marriage.

On the other hand, the Supreme Court, expressing that exterior express of forgiveness or mere promise for forgiveness would not be admitted to the term of ‘pardon’ of adultery, explains the reasons as below: The term of ‘pardon’ of adultery means a unilateral expression to indicate that a spouse would not call his/her spouse who committed adultery responsible for adultery, presuming the maintenance of marriage, while he/she knows that his/her spouse

committed adultery, as the post-forgiveness stated in Article 841 of the Civil Act. The term of 'pardon' can be expressed implicitly, without any restriction in expressing, while it should be expressed to show the true mind to maintain the marital relationship while certainly knowing that adultery is committed, in a clear and reliable way (Supreme Court 91Do2049, November 26, 1991; Supreme Court 2007Do4977, November 27, 2008).

Nonetheless, it is not possible to understand the degree of assurance that adultery was committed by a partner spouse. It is also difficult to figure out how the will to maintain the marital relationship can be expressed in a clear and reliable way. Accordingly, the citizens would not be able to predict whether the adultery is pardoned or not, before the court decides each case.

Whereas the elements of adultery are clearly stated, the term of 'condone' or 'pardon', which can nullify prosecution, is vague, suggesting that the people subject to the law cannot predict the scope and limits of governmental power. Therefore, the Provision at Issue infringes on the principle of clarity.

(3) Principle of Proportionality between Responsibility and Criminal Punishment

The types and scope of statutory punishment should be decided by the Legislature within the legislative discretion, with the comprehensive considerations of the nature and public interest of crime, history and culture of our society, circumstances at the time of enactment, general value or legal sense of the people, and criminal policy for crime prevention (90Hun-Ba24, April 28, 1992). The concept of a constitutional State involves the idea of a substantially constitutional State that requires an appropriate relationship of proportionality between gravity of the crime and responsibility of the offender. Therefore, the right to legislation of legislators cannot be unlimited. Human dignity and value must be respected and protected; a scope of statutory sentence should be designed, in which customized punishments can be applied in accordance with the rule against excessive restriction under Article 37 Section 2 of the Constitution; and the principle of proportionality must be observed so that the punishment corresponds to responsibility and gravity of the crime (2002Hun-Ba24, November 27, 2003). The Provision at Issue exclusively imposes imprisonment as statutory sentence. In order to justify the imprisonment as a sole statutory punishment, the gravity and illegality should be substantial so that pecuniary punishment, lighter than imprisonment, is not appropriate and it has to be rationally predictable that the offender, in practice, will not be sentenced to criminal punishment beyond his responsibility in individual cases. Among the offenses regarding sexual culture and practice, only the adultery provision states imprisonment as statutory punishment exclusively. It suggests that the Legislature presumed that illegality of adultery is substantial and the types of adultery are not various, thereby adultery should be punished by imprisonment exclusively.

However, a vast majority of adultery and fornication cases exist, where the gravity of crime varies significantly according to the mode of act. It could be an intentional offense breaking the

marital fidelity, or it could be the result of building a new family while the marital relationship was *de facto* dissolved. It could be either an intentional and continuous offense, or an incidental one time affair. Also, the legal accountability differs between the person who committed adultery while maintaining *de jure* or *de facto* marital relationship and the unmarried offender who committed fornication under the belief that his/her partner's marriage was in fact facing a breakdown. As such, it is fully predictable in general that the accountability widely varies from case to case.

The Provision at Issue nevertheless imposes imprisonment as an exclusive punishment of adultery and fornication acts, which excessively exaggerates the punitive aspect granted to criminal punishment, losing the balance between punishments. The statutory sentence confined to imprisonment as prescribed by the Provision at Issue makes it difficult to apply the law appropriately according to specific cases in the process of investigation and trials. This also restricts judges' sentencing discretion in announcing the ruling. It also appears that it is the imprisonment – the only sentence that greatly encourages abuse outside the original purpose of the system – the means to blackmailing or demanding excessive payment of compensation for grief by taking advantage of fear for detainment. The statutory imprisonment prescribed as the sole punishment causes the above mentioned abuse cases, which are against the nature of the system.

Indeed, it is possible to have the necessity for heavy punishment of some types of crimes irrespective of the mode of act. Nonetheless, it would lose the balance between the crime and punishment to impose imprisonment exclusively for the various types of adultery. Adultery is a ground for claim of judicial divorce as well as a ground for claim of liability as it constitutes torts. It does not correspond to the modern legal sense to punish adultery by imprisonment, in addition to civil restrictions. Given the reality where the debate over the adultery ban from the criminal policy and legislative perspectives continues and many countries have abolished adultery crime, it was proven that the legal awareness of adultery has substantially changed, compared to the time of the enactment of the Provision at Issue.

In addition, the Provision at Issue states the maximum term of imprisonment as 2 years. Accordingly, a person who was convicted for adultery would serve a short-term imprisonment in most cases, if he/she is not sentenced with probation or suspended sentence. However, a short-term imprisonment has been criticized for abolishment or revision in that it presents several problems including labeling effects and infection during enforcement, while the deterrence effects are not expected. Accordingly, Australia provides a choice for daily fine instead of short-term imprisonment and the U.K. introduced community service or probation as an alternative to short-term imprisonment. Our court practice, also, would announce probation, instead of actual imprisonment, in order to prevent the side effects of short-term imprisonment in most cases, weakening the effects of punishment.

As a result, the Provision at Issue providing a short-term imprisonment exclusively for various

types of adultery, whose gravity of illegality is different, is against the principle of rule of law by losing the balance between crime and punishment. Also, it does not correspond to the legal sense of the people as well as the global trend of legislation. Therefore, the Provision at Issue violates the principle of proportionality between responsibility and punishment in that it excludes or restricts the possibility to consider the individuality and distinctiveness of individual cases by providing all adultery and fornication shall be punished by imprisonment less than 2 years.

VI. Conclusion

Despite the differences in reasoning, seven Justices agreed that the provision at issue is unconstitutional as set forth in the holding. The decision was also made with the dissenting opinion of Justice Lee Jung-Mi and Justice Ahn Chang-Ho as set forth in VII. and the concurring opinion to the majority opinion of Justice Lee Jin-Sung as set forth in VIII.

VII. Dissenting Opinion of Justice Lee Jung-Mi and Justice Ahn Chang-Ho

We are of the opinion that the Provision at Issue does not violate the Constitution, contrary to the majority opinion, as follows:

A. The Right of Sexual Self-Determination Protected by the Constitution

(1) Article 10 of the Constitution provides that, "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals", thereby guaranteeing people's personal rights and the right to pursue happiness. The right to self-determination is presupposed by personal rights and the right to pursue happiness and also includes the right to sexual self-determination for whether or not and with whom to engage in sexual intercourse. It is undoubted that regulation of adultery restricts the right to sexual self-determination.

The right to self-determination protected under our Constitution means the personal autonomy to decide one's matter by his/her own will in order to develop his/her personality, presuming a person is reasonable and reliable. A married couple should bear duties and responsibilities in making a family life of marriage that is developed and co-developed by the free will of two persons. A family relationship based on marriage composes cohabitation for preserving and protection of basic life of the family's members including the spouse, and delivering and raising of new family members, all under the presumption of marital fidelity and faith. A family community is also a fundamental ground to realize the right to personality and the right to pursue happiness of his/her own as well as a spouse and as a family member.

Nonetheless, the act of adultery committed by a married person is not included in the realm of the protected individual right to sexual self-determination, because such an act would violate the marital fidelity despite he/she chose marriage as a social system and thereby damages the social and legal system, which is marriage based on monogamy, having a destructive impact on the family community. It would be hardly agreeable to protect such an act under the right to

sexual self-determination, as the majority opinion does. The right to sexual self-determination would protect love and sexual activities with the opposite sex. Nevertheless, an act of adultery or fornication that infringes on the legal interests of others or community, beyond his/her own boundary, would depart from the inherent limitation of the right to sexual self-determination.

(2) Family is the most fundamental community of human beings. It implies that family, which is the basis of the nation and society should be established and maintained. Considering that the marital relationship through marriage is the basic essence of family community, the marital relationship through marriage should be legally protected and respected for the sound existence of the nation and society.

Article 36 Section 1 of the Constitution, which provides that "Marriage and family life shall be established and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal", stipulates that human dignity and gender equality shall be guaranteed even in family life and that institutions for marriage and family life shall be protected (*See* 2000Hun-Ba53, March 28, 2002). It suggests that the dignity of individuals and gender equality are the constitutional value in enacting law regarding marriage and family life. The marriage system based on dignity of individuals prohibits bigamy, while asking for monogamy. Adultery or fornication would be a major threat to monogamy as a fundamental of the marriage system as well as cause social problems including abandoning a spouse or family member.

The Provision at Issue intends to promote the marriage system and family life based on monogamy and marital fidelity between spouses, performing the duty to promote and protect marriage and family life based on individual dignity and gender equality under Article 36 Section 1 of the Constitution. From this perspective, a strong doubt would arise whether it is appropriate to admit an act infringing the social system of marriage based on monogamy and giving destructive effects on the promotion of family community, which is a fundamental ground for 'the right of personality and right to pursue happiness of his/her own, his/her spouse and family' under the scope of the right to sexual self-determination of individuals.

B. Criminal Punishment of Adultery and Legislative Discretion

A question may arise whether it is excessive to provide criminal punishment, instead of civil regulations or family regulations, against adultery or fornication. The issue of exercising criminal punishment or regulating by moral rules should be decided according to the correlation between people and society, time and space by circumstances at time or legal perception of the general public. Therefore, the issue whether adultery should be punished by criminal punishment in addition to civil regulations should be, in principle, decided according to the legislative policy within the legislative discretion (*see* 2000Hun-Ba60, October 25, 2001).

The Provision at Issue has been criticized in that it intervenes and enforces the issue of ethics or morality of individuals. Nonetheless, it is beyond the mere issue of ethics and morality in that

adultery or fornication committed by a married person and his/her participant is a major threat to the dissolution of marriage and family life, deviating from the reasonable social ethics.

It is well known that the global trend is to repeal adultery crimes; the general perception of the citizens regarding sex has substantially changed according to the rapid acceptance of individualism and sexual liberty; and the normative power of the Provision at Issue has been relieved. Nonetheless, despite of the significant changes in the structure and general perception of the society, the ideal of chastity inherent in the Korean society, in particular that between husband and wife, is inherited from traditional ethics that is still rooted in the society. Because sustaining monogamy and the obligation to remain sexually faithful is established as a part of our moral standards, it is still our legal awareness that adultery undermines social order and infringes on others' rights (*see* 2007Hun-Ka17, October 30, 2008, etc.). The Constitutional Court had decided that adultery crimes were not unconstitutional, confirming the above ideas for several times, in a series of precedents from its foundation to 2008. We should be prudent in deciding whether there is a change of circumstances to alter established precedents.

The majority opinion suggests that the legal perception of the general public has changed. Nonetheless, there is no empirical evidence to prove the change of the legal perception of the general public. A survey conducted by the Korea Legal Aid Center for Family Relations with regard to the abolition of adultery in 2005 presented that 7,721 people (about 60% of the poll) agreed the retention of adultery crimes among 12,516 people. A survey conducted by a public opinion survey institution in 2009 showed that 64.1% of the poll agreed the retention of adultery crimes among 1,000 people aged 19 and above with regard to the abolition of adultery crimes. A survey conducted by the Korean Women's Development Institute in 2014 also indicated that 60.4% of the poll agreed the retention of adultery crimes among 2,000 people aged 19 and above. It clearly suggests that the general public, including women who are economically and socially underprivileged, still supports the idea that the nation should protect family by criminally punishing adulterous acts. In these terms, our criminal law has aggravated punishment provision for injury or murder of ascendants in that it serves the protection of the least ethical morality of our society, instead of the enforcement of the filial duty or morality by law.

We cannot deny the role of criminal punishment in maintaining the good sexual morality of the society. Korea has prohibited adultery and punished a person who committed adultery or fornication since the law prohibiting 8 conducts in the era of *Kojoson*. Thenceforth, a perception that adultery is prohibited by law and adulterous acts are punished by criminal punishment is deeply rooted in our society. A provision to punish adulterous acts has had a general deterrence effect to prevent the general public from committing adultery. It also has served the protective function for the sound sexual morality of the society as well as the marital relationship and precious family. The abolition of adultery might lower the sexual morality of our

society by demolishing a threshold of 'the least sexual morality'; cause disorder of sexual morality of our society by repealing the criminal awareness against adultery; and stimulate, accordingly, dissolution of marriage and family community. It implies that the fundamental system of community of human beings, which is 'family-society-nation' stated by the German philosopher George Wilhelm Friedrich Hegel, could be infringed. It suggests that the legislature's judgment to criminally punish adultery, in addition to the autonomous reflection of ethical principles of individuals and the society, would not be arbitrary.

It would be certainly debatable whether the criminal punishment on adultery, where marriage is irreparably broken, including a case of long-term separation, and the spousal obligation of faithfulness no longer exists, is beyond the reasonable scope to achieve the legislative purpose.

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It would be certainly debatable whether the criminal punishment on adultery, where marriage is irreparably broken, including a case of long-term separation, and the spousal obligation of faithfulness no longer exists, is beyond the reasonable scope to achieve the legislative purpose.

Nevertheless, it might be possible to consider that an adulterous act which lacks condemnation of the society does not violate the social rule and to deny the valid establishment of adultery by supplementing the concept of the term of 'condone' and 'pardon'. In this regard, the Supreme Court has held that if a marriage is irreparably dissolved despite the couple is not divorced yet, a sexual activity between a spouse and his/her fornication partner would not infringe on the marital cohabitation and cause any damage regarding rights to the marital cohabitation, implying that it does not compose any illegal acts (Supreme Court 2011Meu2997, November 20, 2014, en banc decision). Despite this Supreme Court decision concerning the civil liability, it implies that, where the marital cohabitation is *de fact* dissolved, an adulterous act would not be regarded as an act which violates social rules under the social ethics or social perception, for the lack of illegality.

The issue of how to punish a crime, which relates a choice of a type and scope of statutory punishment, should be decided by the legislature within the legislative discretion under the comprehensive considerations of our history, culture, circumstances at the time of enactment, values or legal perception of the general public, and criminal policy for crime prevention.

The Provision at Issue stipulates only imprisonment as punishment, but the maximum sentence of two years would not be heavy and the sentence shall be mitigated to suspension of sentence for adultery crime whose gravity of crime is not substantial. Therefore, it should not be regarded that the Provision at Issue imposes overly excessive criminal punishment that is not allowed for proportional punishment. Further, adultery and fornication, once prosecuted, result in different invasion of interests than other crimes concerning sexual culture and practice in that they cause social problems inevitably stemming from family breakdown regardless of modes of acts. Also, light fines would not be likely to have deterrence effects on adulterers who desire to avoid the responsibility of support or tort liability coming from the existing marriage. In that sense, the legislator's non-enactment of fines in the Provision at Issue, unlike other sexual custom-related crimes under the Criminal Act, would not violate the balance of criminal punishment (*see* 2007Hun-Ka17, etc., October 30, 2008).

C. Implication of Retention of Adultery

The divorce rate of Korea has dramatically increased since the 1980s, reaching at around 40% after 2000s. Currently, Korea is the country where shows the highest divorce rate among Asian countries. From 2000 through 2006, a misconduct of a spouse is the biggest reason of a claim for judicial divorce, forming 47.1% among the reasons of claim. The majority opinion suggests that the protection of a spouse, whose spouse committed adultery, can be achieved by a claim for damage of property and mental harm. Nonetheless, division of property is rarely effective and the amount of alimony is nominal for a housewife, who does not experience social activities and is economically and socially underprivileged in family. The current civil system and judicial practice do not suffice in protecting the economically and socially underprivileged in that various systems to protect the underprivileged, including a claim for division of property

during marriage, restriction on the arbitrary disposition of a spouse with regard to a residential building, the right to cancel a fraudulent transaction to reserve the right of division or property or protection of shares of inheritance according to divorce, are not arranged.

The juvenile delinquency which arises as a serious social problem, recently, also presents a point. Family takes charge of a significant role to educate children to be a sound member of society by providing stable resources and opportunities in life as well as internalizing social rules approved by society and preventing delinquency, as a social institute to be in charge of birth and nurture, socialization, social-regulation of children. Therefore, the dissolution of family community due to adultery may exercise a harmful influence on children. Several researches with regard to the causation of juvenile delinquency indicate that the rate of delinquency of children coming from broken families, including a case of divorce or separation, is higher than ones coming from parents families.

The current systems and practices of the Civil Act do not offer sufficient protection for the socially and economically underprivileged in case of divorce. If adultery crime is abolished without providing the social safety-net for custodial responsibility and broken family upon divorce, it is concerned that several family communities would be dissolved and human rights and welfares of the underprivileged and young children would be infringed, for placing one's right to sexual self-determination and privacy before the responsibility of marriage and preciousness of family.

As seen above, punishment of adultery is still meaningful in our society. Whereas the Provision at Issue protects the sound sexual morality and marriage and family life, the regulation of acts by the Provision at Issue is a restriction on sexual behavior in specific relations that adulterous acts are forbidden during the *de jure* marriage and fornication is prohibited, if one of partners is legally married. The duty and responsibility naturally concurs with the marital relationship which is formed based on free will, in case of a person who committed adultery. It would be also reasonable for an unmarried person, who is a partner of fornication, to be responsible for not participating in fornication, knowing the violation of legal and moral duties. Therefore, the public interests achieved by the Provision at Issue and the side effects arising out of the Provision at Issue would not infringe on the reasonable proportionality.

D. Sub-Conclusion

The Provision at Issue would not violate the Constitution in that it does not restrict the right to sexual self-determination as it does not infringe on the principle against excessive restriction.

VIII. Concurring Opinion to Majority Opinion of Justice Lee Jin-Sung

I write additionally to the majority opinion to point out why stipulating the punishment by imprisonment as the only statutory punishment for an offense of adultery is against the principle of proportionality between responsibility and punishment and whether expanding classes of the statutory punishment for the offense can avoid declaration of unconstitutionality.

Determining how to punish a criminal offense, in other words, deciding the classes and sentence of statutory punishment, involves consideration of the nature of crime, interests protected by law, and punishment. The determination should be made by comprehensively considering historical, cultural and current circumstances, people's values or legal sentiments, and a criminal policy on prevention of crimes.

As was pointed out earlier in this decision, acts of adultery may be carried out in various forms. Thus, it is highly probable that stipulating imprisonment as the only statutory punishment for acts of adultery may offend the balance between responsibility and punishment. However, a fine which is a lesser degree of punishment than imprisonment, has been recognized as compensation or *wergild* that has the nature of personal compensation, and historically it functioned as an adequate punishment for an offense of taking the profit of others and has had strong significance as a means of redeeming profits acquired by a criminal out of a crime in reality. As adultery is an immoral crime committed by violating the duty of marital fidelity, bringing disorder in the marriage system, and not a crime taking the profit of others, a fine is not an appropriate means to punish adultery in the light of the nature of the crime.

The reason why imposing criminal punishment on adultery is expected to have no actual and fundamental preventive effect is that marital fidelity is not what can be regulated through coercion by law; failure to specify a fine as statutory punishment for adultery is not the reason. Imposing a minor fine against acts of adultery will hardly have a deterrent effect on a person committed adultery, who desires to avoid responsibility to support the family and pay monetary compensation incurred by dissolution of a marital relationship (see 2007Hun-Ka17, October 30, 2008). Also, it may result in offering a way out of what he or she had done, if the person is financially well-off. On the other hand, while one of the consequences of imposing a heavy fine is to diminish one's property, under the current system in which property owned by husband and wife is assumed to be common property unless it is the separate property owned by one spouse, a heavy fine imposed on a single spouse may result in disturbing the property of both spouses.

The qualification punishment, a form of honor punishment adopted by the Criminal Act, that deprives or restricts diverse qualifications in the public law relations, and other qualifications including a government official's right to vote, run for an election, or become a director of a company, is an adequate form of punishment for a government official's crimes related to official duties or the Public Official Election Act. The qualification punishment has recently become a subject to controversy over whether the punishment should be maintained as one of major criminal punishments. Therefore, given the nature of the qualification punishment, the punishment is not different from a fine that it is also not an appropriate means of punishment for adultery involving a violation of the marital fidelity.

As examined above, a fine or qualification punishment cannot serve as an appropriate means of punishment for adultery. Given this, maintaining the offense of adultery and including a fine

or qualification punishment as statutory punishment for adultery in order to pursue the principle of proportionality between responsibility and punishment are not in the best interest of protecting a good-faith spouse and children.

The crime of adultery, once prosecution begins and unless a charge is dropped, inevitably causes social problems generated by a breakup of family regardless of the type of acts of adultery. The dissenting opinion asserts retention of the crime of adultery for the reason that no proper protection measures for women and children who are economically disadvantaged in the process of dissolution of family are yet in place. However, I do not believe that resolution of civil and family lawsuits generated by misconduct of a single spouse should resort to criminal proceedings by maintaining the crime of adultery.

In the end, abolishing the crime of adultery which has shown no actual deterrent effect, and reforming trial practice relating to a damage claim for tortious act, a claim for division of property, and custody and visitation of a child as well as coming up with systems to protect welfare of a deserted spouse and children will be the right path to pursue.

Justices Park Han-Chul (Presiding Justice), Lee Jung-Mi, Kim Yi-Su, Lee Jin-Sung, Kim Chang-Jong, Ahn Chang-Ho, Kang Il-Won, Seo Ki-Seog and Cho Yong-Ho

[Appendix]

(intentionally omitted)



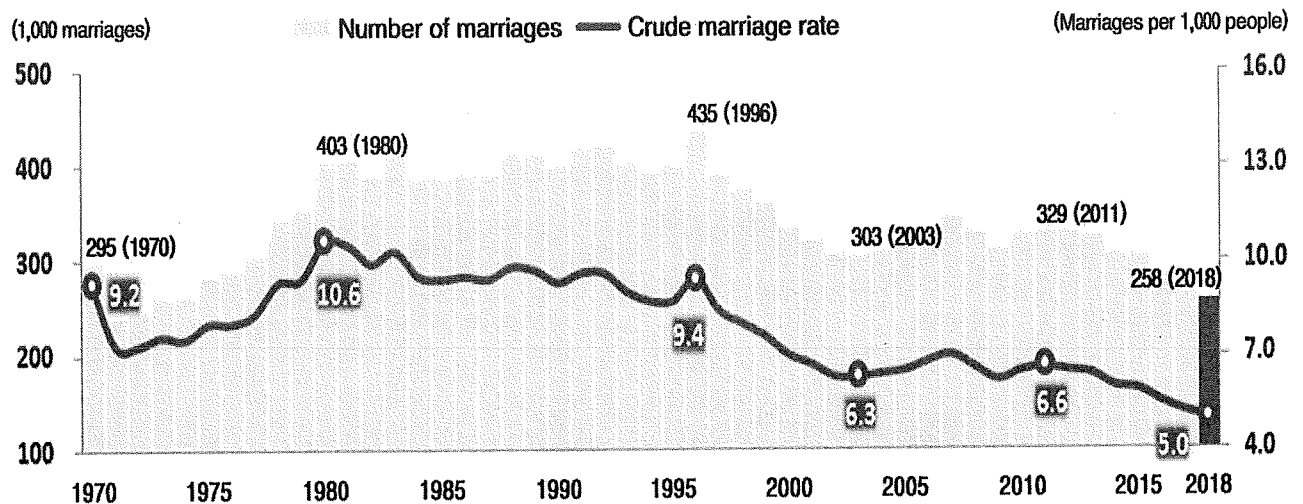
Marriage and Divorce Statistics in 2018

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二

In 2018, the number of marriages was 257.6 thousand, which decreased by 2.6% (-6.8 thousand) from 2017.

○ (Crude marriage rate) (the number of marriages per 1,000 people)

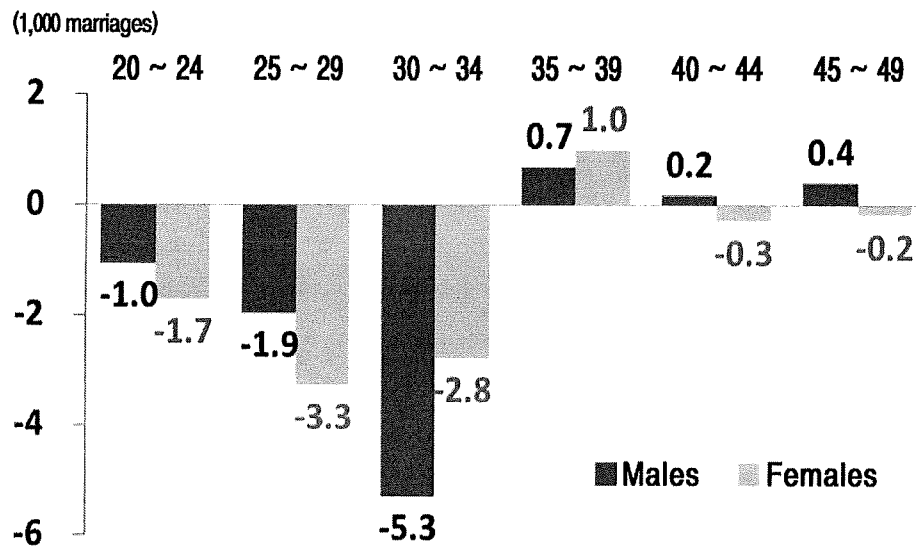
The crude marriage rate stood at 5.0 in 2018, which dropped 0.2 from 2017.



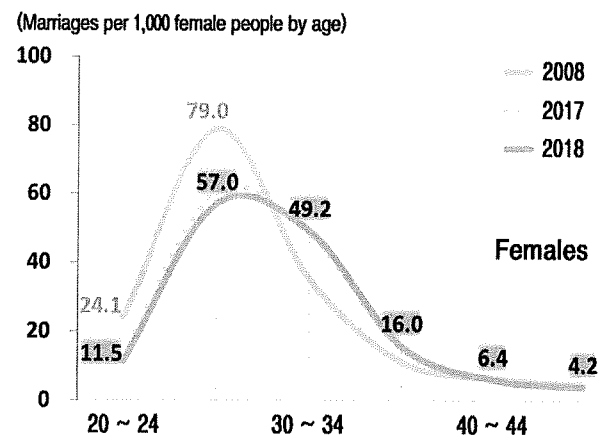
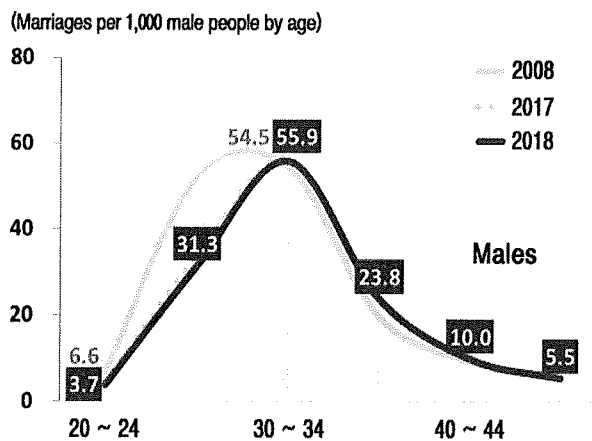
○ (Number of marriages by age)

Compared to 2017, the marriages of males aged 30 to 34 showed the highest decrease. The marriages of females aged 25 to 29 showed the highest decrease.

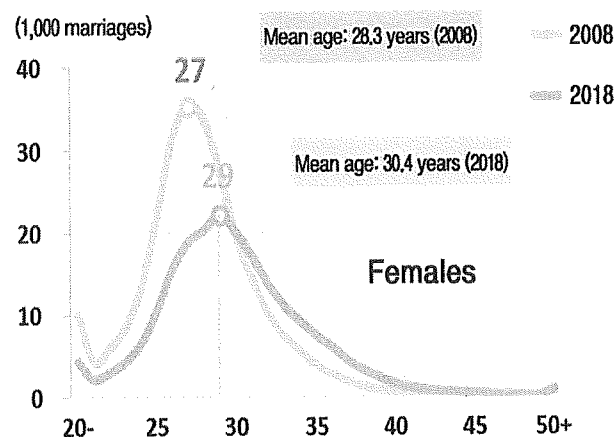
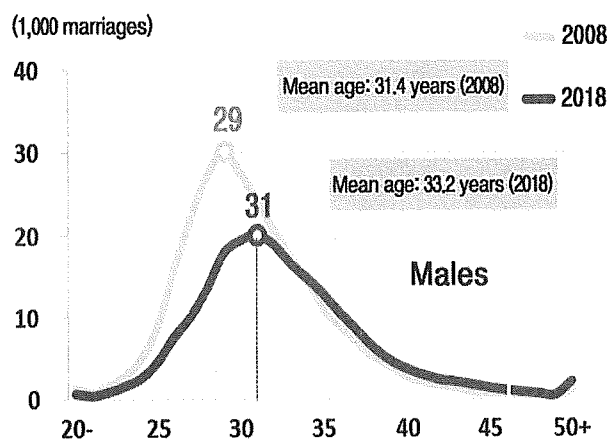
- The marriage of males aged 30 to 34 dropped by 5.3 thousand (-5.4%) from 2017. The marriage of females aged 25 to 29 dropped by 3.3 thousand (-3.5%) from 2017.



- (Marriage rate by age) (the number of marriages per 1,000 people in a given age)
 As for the marriage rate by age, males aged 30 to 34 showed the highest figure of 55.9 marriages per 1,000 people. Females aged 25 to 29 showed the highest figure of 57.0 marriages per 1,000 people.



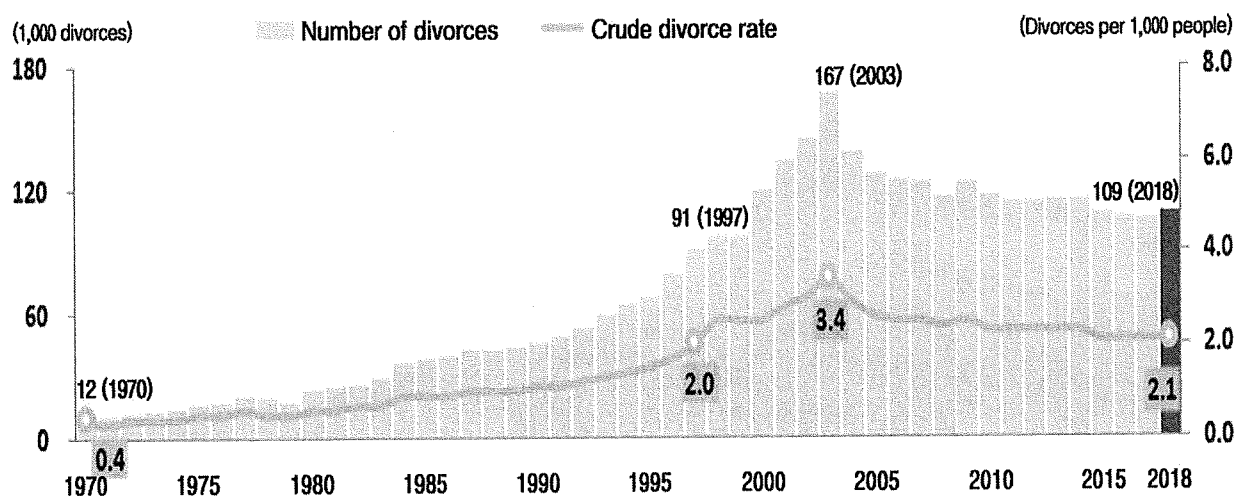
- (Mean age at first marriage)
 The mean age at first marriage for males was 33.2 years in 2018, up 0.2 year from 2017. The mean age at first marriage for females was 30.4 years in 2018, up 0.2 year from 2017.



In 2018, the number of divorces was 108.7 thousand, which increased by 2.5% (2.7 thousand) from 2017.

○ (Crude divorce rate) (the number of divorces per 1,000 people)

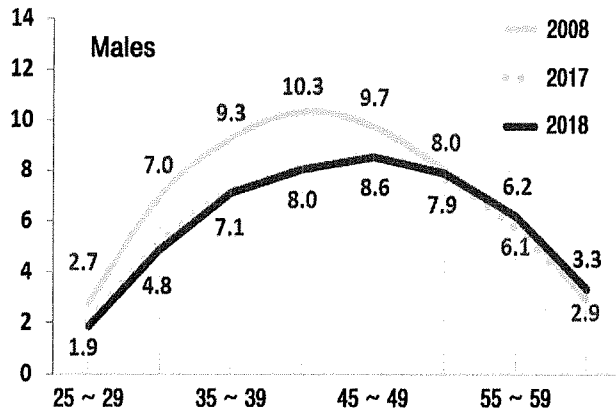
The crude divorce rate stood at 2.1 in 2018, which remained the same as 2017.



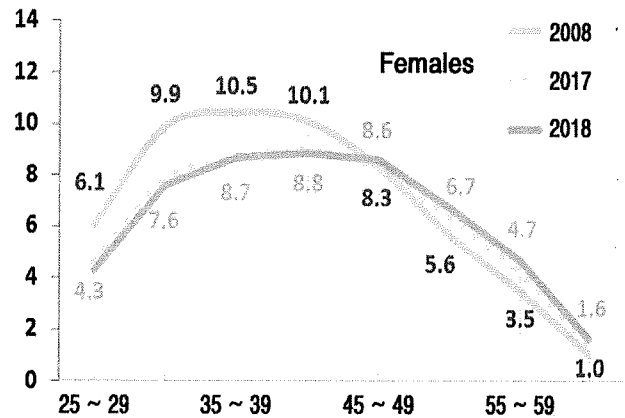
○ Divorce rate by age) (the number of divorces per 1,000 people in a given age)

As for the divorce rate by age, males aged 45 to 49 showed the highest figure of 8.6 divorces per 1,000 people. Females aged 40 to 44 showed the highest figure of 8.8 divorces per 1,000 people.

(Divorces per 1,000 male people by age)



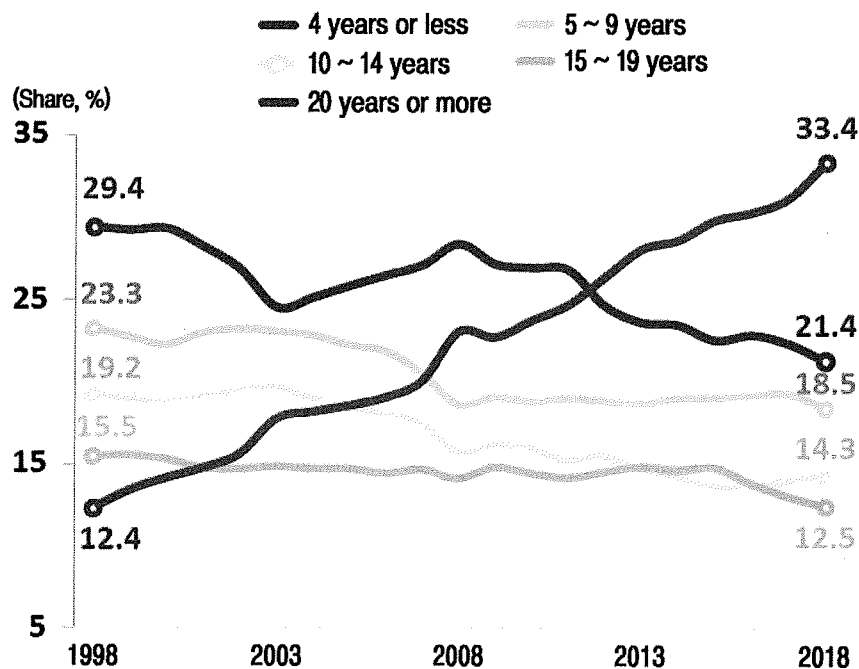
(Divorces per 1,000 female people by age)



○ (Duration of marriage)

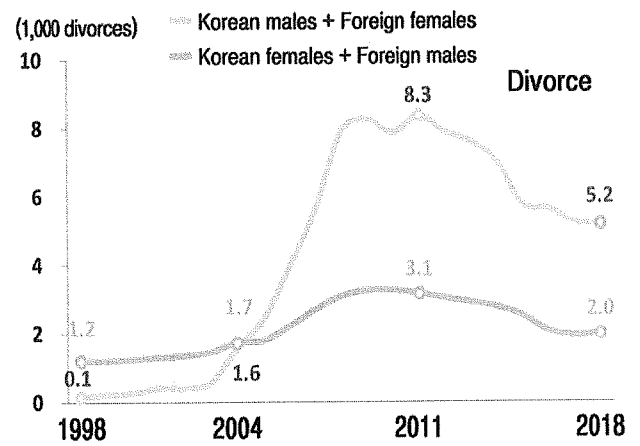
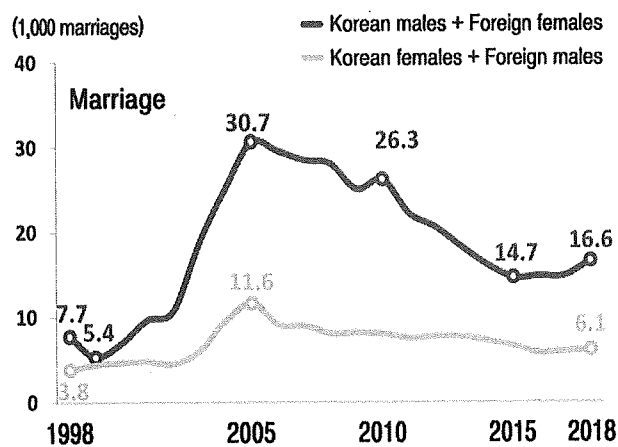
The duration of '20 years or more' of marriage before getting divorced occupied the highest share at 33.4% of the total divorces, which was followed by the duration of '4 years or less' (21.4%).

- The average duration of marriage before getting divorced recorded 15.6 years, rising by 0.6 year from 2017.



The number of marriages with foreign spouses increased by 8.9% from 2017. The number of divorces with foreign spouses increased by 0.1% from 2017.

- The number of marriages with foreign spouses increased by 1.9 thousand (8.9%) to 22.7 thousand in 2018. The number of divorces with foreign spouses increased by 0.1% to 7.1 thousand in 2018.



Marriage and Divorce Statistics in 2017

In 2017, the number of marriages was 264.5 thousand, which decreased by 6.1 percent (-17.2 thousand) from 2016.

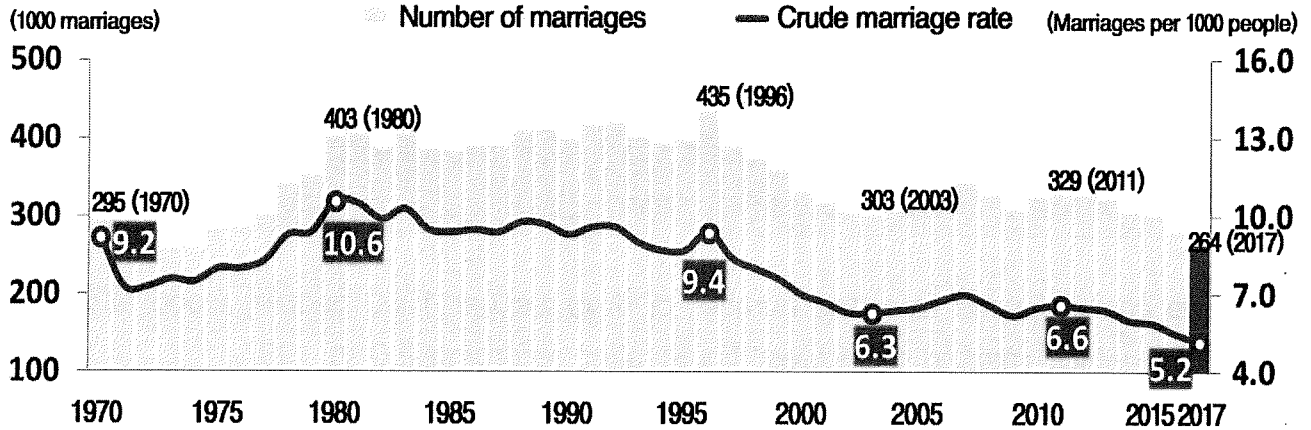
- The crude marriage rate (the number of marriages per 1000 people) stood at 5.2 in 2017, which recorded the lowest figure since the statistical production in 1970.
- Compared to 2016, the marriages of males aged 30 to 34 showed the highest decrease (-11.3 thousand, -10.3%). The marriages of females aged 30 to 34 showed the highest decrease (-7.9 thousand, -9.0%).
- Compared to 2016, the couples of 'males at first marriage and females at first marriage' showed the highest drop (-6.8%, -15 thousand), which was followed by the couples of 'males at remarriage and females at remarriage' (-3.2%, -1 thousand).
- As for the marriage rate by age(the number of marriages per 1000 people in a given age), males aged 30 to 34 showed the highest figure of 56.4 marriages per 1000 people. Females aged 25 to 29 showed the highest figure of 60.6 marriages per 1000 people.
- The mean age at first marriage for males was 32.9 years in 2017, up 0.2 year from 2016. The mean age at first marriage for females was 30.2 years in 2017, up 0.1 year from 2016.
- The number of marriages with foreign spouses increased by 1.2 percent (0.2 thousand) to 20.8 thousand in 2017.
- As for the crude marriage rate by province, Sejong recorded the highest figure of 6.6 per 1000 people, which was followed by Jeju (5.7) and Seoul (5.5).

In 2017, the number of divorces was 106 thousand, which decreased by 1.2 percent (-1.3 thousand) from 2016.

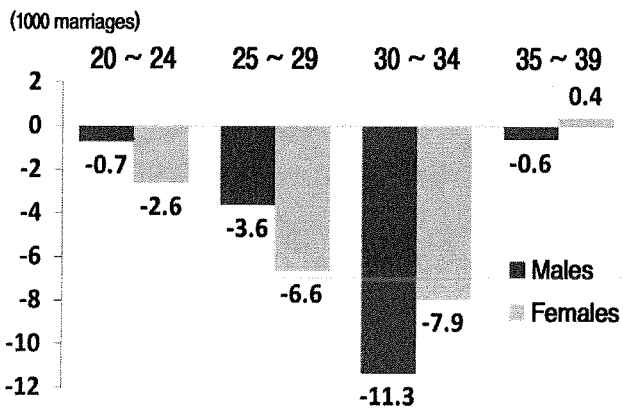
- The crude divorce rate (the number of divorces per 1000 people) stood at 2.1 in 2017, which marked the lowest figure after recording 2.0 in 1997.
- The divorce rate of married people (the number of divorces per 1000 married people) stood at 4.4 in 2017, which remained the same as 2016.
- As for the divorce rate by age (the number of divorces per 1000 people in a given age), males aged 45 to 49 showed the highest figure of 8.6 divorces per 1000 people. Females aged 40 to 44 showed the highest figure of 8.9 divorces per 1000 people.
- The mean age at divorce for males was 47.6 years in 2017, up 0.4 from 2016. The mean age at divorce for females was 44.0 years in 2017, up 0.4 from 2016.
- The duration of '20 years or more' of marriage before getting divorced occupied the highest share at 31.2 percent of the total divorces, which was followed by the duration of 'less than 5 years' (22.4 percent).
- The number of divorces with foreign spouses fell by 7.0 percent (-0.5 thousand) to 7.1 thousand in 2017.
- As for the crude divorce rate by province, Incheon and Jeju marked the highest figures of 2.4, which was followed by Chungnam (2.3). Seoul, Daegu, Gwangju and Sejong marked the lowest figures of 1.8.

[Marriage Statistics in 2017]

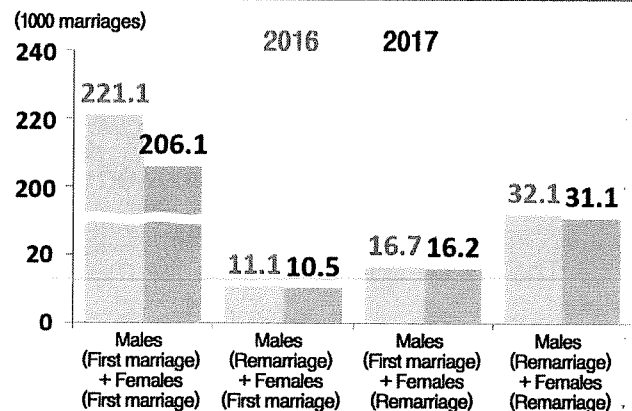
Number of marriages and crude marriage rate (1970-2017)



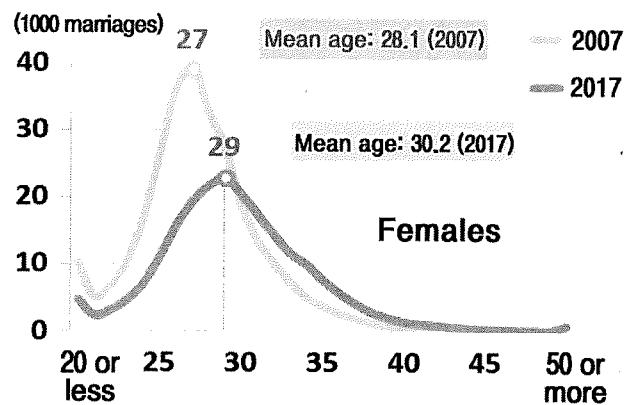
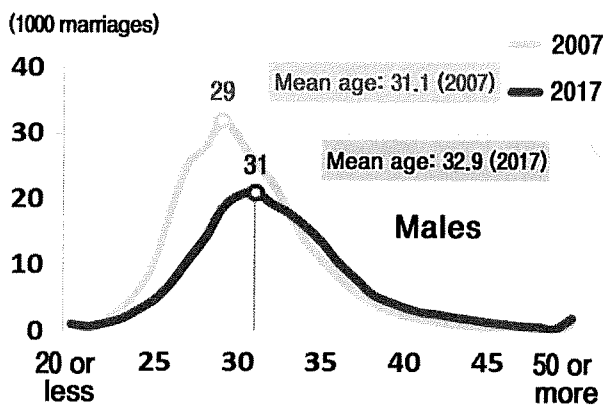
Change in the number of marriages by age (2017)



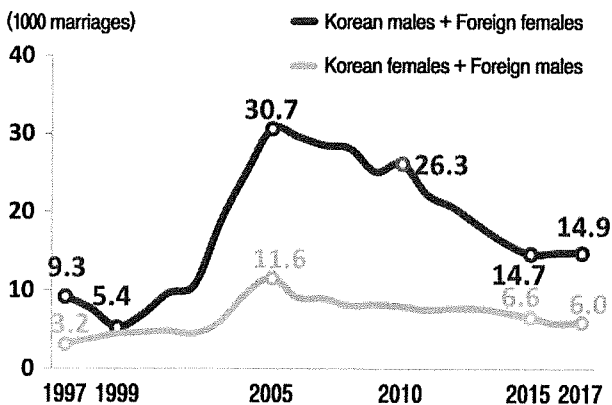
Number of marriages by marriage type (2016, 2017)



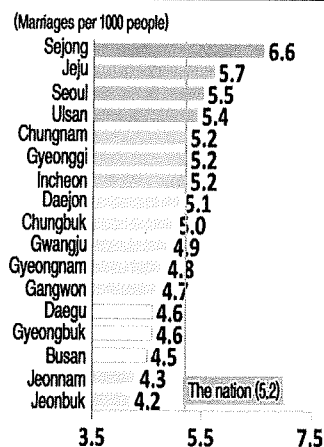
Number of marriages by age at first marriage and mean age at first marriage (2007, 2017)



Number of marriages with a foreign spouse (1997-2017)

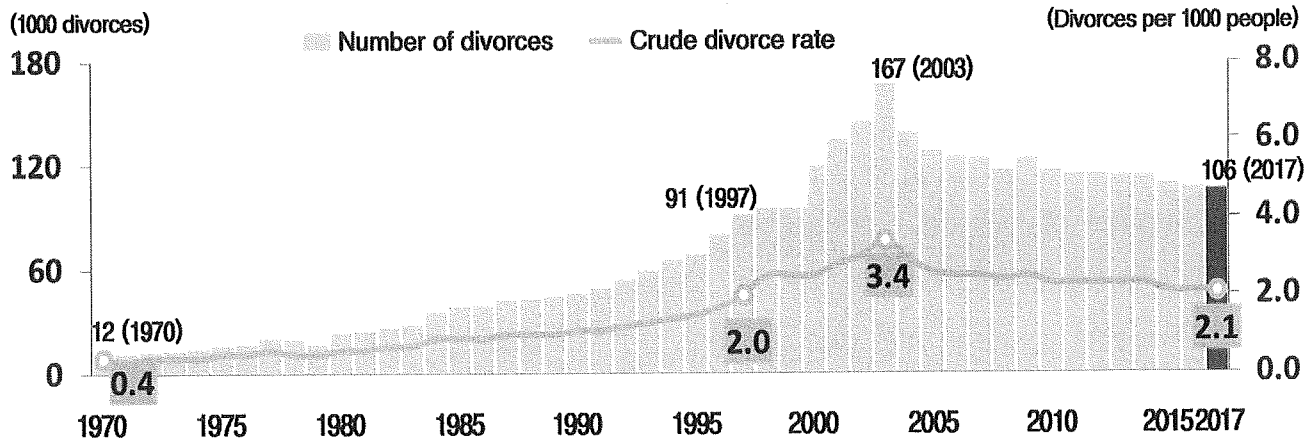


Crude marriage rate by province (2017)

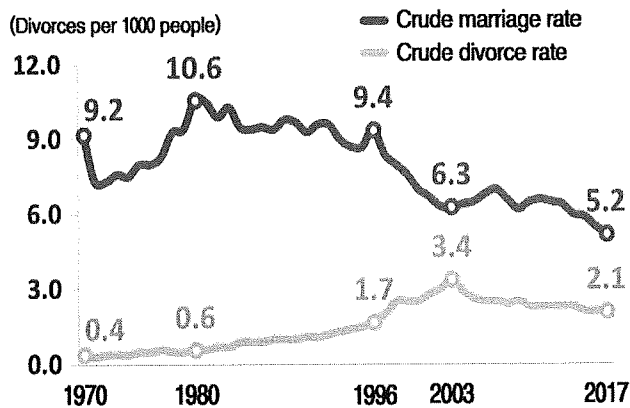


[Divorce Statistics in 2017]

Number of divorces and crude divorce rate (1970-2017)



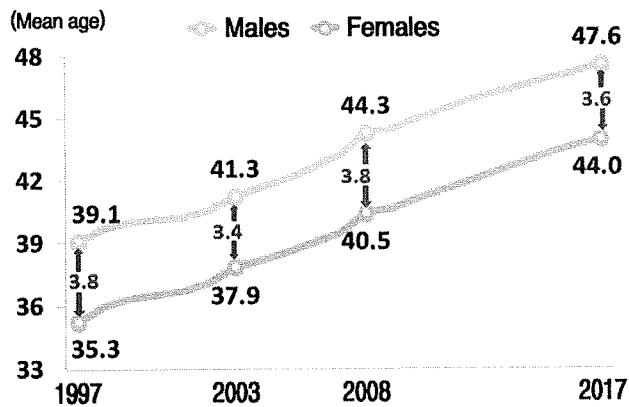
Crude marriage rate and crude divorce rate (1970-2017)



Divorce rate by age of husband (2007, 2016, 2017)



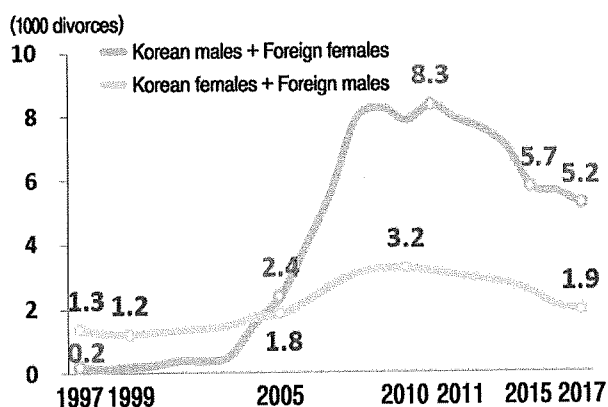
Mean age at divorce (1997-2017)



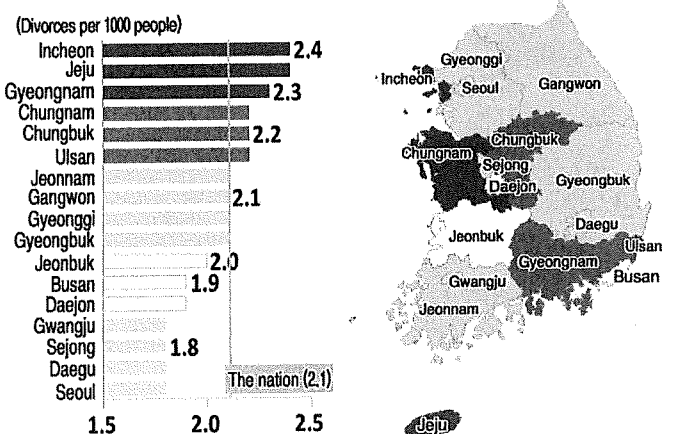
Distribution of divorces by duration of marriage (1997, 2017)



Number of divorces with a foreign spouse (1997-2017)



Crude divorce rate by province (2017)



Marriage and Divorce Statistics in 2016

The number of marriages went down by 7.0 percent (21.2 thousand cases) to 281.6 thousand cases in 2016.

- The crude marriage rate (the number of marriages per 1,000 population) stood at 5.5 cases in 2016, which recorded the lowest figure after the statistical production in 1970.

[Table] Number of marriages and crude marriage rate (2006-2016)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of marriages (thousand cases)	330.6	343.6	327.7	309.8	326.1	329.1	327.1	322.8	305.5	302.8	281.6
Change (thousand cases)	16.3	12.9	-15.8	-18.0	16.3	3.0	-2.0	-4.3	-17.3	-2.7	-21.2
Percent change (%)	5.2	3.9	-4.6	-5.5	5.3	0.9	-0.6	-1.3	-5.4	-0.9	-7.0
Crude marriage rate*	6.8	7.0	6.6	6.2	6.5	6.6	6.5	6.4	6.0	5.9	5.5

* The number of marriages per 1,000 population

- Compared to 2015, the marriages of males aged 30 to 34 showed the highest decrease (11.8 thousand cases, -9.7%). The marriages of females aged 25 to 29 showed the highest decrease (9 thousand cases, -8.2%).
- As for the marriage rate by age group (the number of marriages per 1,000 population in a given age group), males aged 25 to 29 showed the highest decrease (10.7%, -4.4 cases) from the previous year. Females aged 25 to 29 showed the highest decrease (8.8%, -6.4 cases) from the previous year.
- The mean age at first marriage for males was 32.8 years in 2016, up 0.2 year from 2015. The mean age at first marriage for females was 30.1 years in 2016, up 0.1 year from 2015.

[Table] Mean age at first marriage and remarriage (2006-2016)

(Unit: year)

		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Change*	
													From 2015	From 2006
First marriage	Males	31.0	31.1	31.4	31.6	31.8	31.9	32.1	32.2	32.4	32.6	32.8	0.2	1.8
	Females	27.8	28.1	28.3	28.7	28.9	29.1	29.4	29.6	29.8	30.0	30.1	0.1	2.3
Remarriage	Males	44.4	44.8	45.0	45.7	46.1	46.3	46.6	46.8	47.1	47.6	48.2	0.6	3.8
	Females	39.7	40.1	40.3	41.1	41.6	41.9	42.3	42.5	43.0	43.5	44.0	0.5	4.3

* Rounded to 2 decimal places

- The couples of 'males at first marriage and females at first marriage' occupied 78.5 percent of the total marriages. The couples of 'males at remarriage and females at remarriage' occupied 11.4 percent of the total marriages.

[Table] Number of marriages by marriage type (2006-2016)

(Unit: thousand cases, %)

		2006	2007	2008	2009	2010	2011	2012
Total*		330.6	343.6	327.7	309.8	326.1	329.1	327.1
Males	First marriage	273.7	285.4	270.2	255.8	273.0	277.4	275.9
	Remarriage	55.6	57.1	57.2	53.8	53.0	51.6	51.1
Females	First marriage	269.3	280.7	264.5	250.7	268.5	272.6	270.5
	Remarriage	59.7	61.9	62.8	58.8	57.5	56.4	56.5
Males (first marriage) + Females (first marriage)		255.2	265.5	249.4	236.7	254.6	258.6	257.0
Males (remarriage) + Females (first marriage)		14.0	14.9	15.0	13.9	13.9	13.9	13.5
Males (first marriage) + Females (remarriage)		18.2	19.6	20.6	19.0	18.3	18.7	18.9
Males (remarriage) + Females (remarriage)		41.3	41.9	42.1	39.8	39.1	37.7	37.6
		2013	2014	2015	2016	Year-on-year		
						Percent	Change	Percent change
Total*		322.8	305.5	302.8	281.6	100.0	-21.2	-7.0
Males	First marriage	273.8	257.9	256.4	238.1	84.5	-18.3	-7.1
	Remarriage	48.9	47.5	46.4	43.3	15.4	-3.1	-6.7
Females	First marriage	268.4	251.5	250.0	232.4	82.5	-17.5	-7.0
	Remarriage	54.3	53.9	52.7	48.9	17.4	-3.8	-7.3
Males (first marriage) + Females (first marriage)		255.6	239.4	238.3	221.1	78.5	-17.1	-7.2
Males (remarriage) + Females (first marriage)		12.8	12.0	11.7	11.1	3.9	-0.6	-4.8
Males (first marriage) + Females (remarriage)		18.2	18.4	18.0	16.7	5.9	-1.3	-7.3
Males (remarriage) + Females (remarriage)		36.1	35.5	34.7	32.1	11.4	-2.6	-7.5

* Including 'unidentified'

- The number of marriages with foreign spouses declined by 3.2 percent (0.7 thousand cases) to 20.6 thousand cases in 2016.

[Table] Marriage with a foreign spouse (2006-2016)

(Unit: thousand cases, %)

	2006	2007	2008	2009	2010	2011	2012
Number of marriages	330.6	343.6	327.7	309.8	326.1	329.1	327.1
Marriage with a foreign spouse	38.8	37.6	36.2	33.3	34.2	29.8	28.3
Korean males and foreign females	29.7	28.6	28.2	25.1	26.3	22.3	20.6
Korean females and foreign males	9.1	9.0	8.0	8.2	8.0	7.5	7.7
	2013	2014	2015	2016	Year-on-year		
					Percent	percent change	
Number of marriages	322.8	305.5	302.8	281.6	100.0		-7.0
Marriage with a foreign spouse	26.0	23.3	21.3	20.6	7.3		-3.2
Korean males and foreign females	18.3	16.2	14.7	14.8	5.3		1.0
Korean females and foreign males	7.7	7.2	6.6	5.8	2.0		-12.6

- As for the crude marriage rate by province, Sejong recorded the highest figure of 7.1 cases, which was followed by Ulsan (6.0 cases), Jeju (5.9 cases) and Seoul (5.9 cases).

[Table] Number of marriages and crude marriage rate by province (2015-2016)

(Unit: case, %, per 1,000 population)

	Number of marriages						Crude marriage rate		
	2015	Percent	2016	Percent	Year-on-year		2015	2016	Year-on-year change
					Change	Percent change			
The nation*	302,828	100.0	281,635	100.0	-21,193	-7.0	5.9	5.5	-0.4
Seoul	64,193	21.2	57,643	20.5	-6,550	-10.2	6.5	5.9	-0.6
Busan	18,553	6.1	17,113	6.1	-1,440	-7.8	5.3	4.9	-0.4
Daegu	12,545	4.1	12,216	4.3	-329	-2.6	5.1	5.0	-0.1
Incheon	17,118	5.7	16,092	5.7	-1,026	-6.0	5.9	5.5	-0.4
Gwangju	7,945	2.6	7,468	2.7	-477	-6.0	5.4	5.1	-0.3
Daejeon	8,805	2.9	8,325	3.0	-480	-5.5	5.8	5.5	-0.3
Ulsan	7,483	2.5	7,006	2.5	-477	-6.4	6.4	6.0	-0.4
Sejong	1,498	0.5	1,612	0.6	114	7.6	8.2	7.1	-1.1
Gyeonggi	73,950	24.4	70,052	24.9	-3,898	-5.3	6.0	5.6	-0.4
Gangwon	7,876	2.6	7,468	2.7	-408	-5.2	5.1	4.9	-0.2
Chungbuk	8,872	2.9	8,334	3.0	-538	-6.1	5.6	5.3	-0.3
Chungnam	12,331	4.1	11,792	4.2	-539	-4.4	6.0	5.7	-0.3
Jeonbuk	9,060	3.0	8,216	2.9	-844	-9.3	4.9	4.4	-0.5
Jeonnam	9,275	3.1	8,554	3.0	-721	-7.8	4.9	4.5	-0.4
Gyeongbuk	14,273	4.7	13,363	4.7	-910	-6.4	5.3	5.0	-0.3
Gyeongnam	18,671	6.2	17,580	6.2	-1,091	-5.8	5.6	5.3	-0.3
Jeju	3,676	1.2	3,705	1.3	29	0.8	6.0	5.9	-0.1

* Including overseas marriages

The number of divorces went down by 1.7 percent (1.8 thousand cases) to 107.3 thousand cases in 2016.

- The crude divorce rate (the number of divorces per 1,000 population) stood at 2.1 cases in 2016, which marked the lowest figure after recording 2.0 cases in 1997.
- The divorce rate of married people (the number of divorces per 1,000 married population) stood at 4.3 cases in 2016, which dropped by 0.1 case from 2015.

[Table] Number of divorces, crude divorce rate and divorce rate of married people (2006-2016)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of divorces (thousand cases)	124.5	124.1	116.5	124.0	116.9	114.3	114.3	115.3	115.5	109.2	107.3
Change (thousand cases)	-3.5	-0.5	-7.5	7.5	-7.1	-2.6	0.0	1.0	0.2	-6.4	-1.8
Percent change (%)	-2.7	-0.4	-6.1	6.4	-5.8	-2.2	0.0	0.9	0.2	-5.5	-1.7
Crude divorce rate*	2.5	2.5	2.4	2.5	2.3	2.3	2.3	2.3	2.3	2.1	2.1
Divorce rate of married people**	5.3	5.2	4.9	5.2	4.8	4.7	4.7	4.7	4.7	4.4	4.3

* Per 1,000 population

** Per 1,000 married population aged 15 or more

- As for the divorce rate by age group (the number of divorces per 1,000 population in a given age group), males aged 35 to 39 showed the highest decrease (35.9%, -4.1 cases) compared to 10 years ago. Females aged 30 to 34 showed the highest decrease (35.3%, -4.2 cases) compared to 10 years ago.
- The duration of '20 years or more' of marriage before getting divorced occupied the highest share at 30.4 percent of the total divorces, which was followed by the duration of 'less than 5 years' (22.9 percent).
- The mean age at divorce for males was 47.2 years in 2016, up 0.3 from 2015. The mean age at divorce for females was 43.6 years in 2016, up 0.3 from 2015.

[Table] Mean age at divorce (2006-2016)

(Unit: year)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Change*	
												From 2015	From 2006
Males	42.6	43.2	44.3	44.5	45.0	45.4	45.9	46.2	46.5	46.9	47.2	0.3	4.6
Females	39.0	39.5	40.5	40.7	41.1	41.5	42.0	42.4	42.8	43.3	43.6	0.3	4.6
Gender gap*	3.6	3.7	3.8	3.8	3.9	3.9	3.9	3.8	3.7	3.6	3.6	-	-

* Rounded to 2 decimal places

- The number of divorces with foreign spouses fell by 6.9 percent (0.6 thousand cases) to 7.7 thousand cases in 2016.

[Table] Divorce with a foreign spouse (2006-2016)

(Unit: thousand cases, %)

	2006	2007	2008	2009	2010	2011	2012
Number of divorces	124.5	124.1	116.5	124.0	116.9	114.3	114.3
Divorce with a foreign spouse	6.1	8.3	11.0	11.5	11.1	11.5	10.9
Korean males and foreign females	3.9	5.6	7.9	8.2	7.9	8.3	7.9
Korean females and foreign males	2.2	2.7	3.1	3.2	3.2	3.1	3.0
	2013	2014	2015	2016		Year-on-year percent change	
					Percent		
Number of divorces	115.3	115.5	109.2	107.3	100.0		-1.7
Divorce with a foreign spouse	10.5	9.8	8.2	7.7	7.1		-6.9
Korean males and foreign females	7.6	7.0	5.7	5.6	5.2		-2.3
Korean females and foreign males	2.9	2.8	2.5	2.1	1.9		-17.6

- As for the crude divorce rate by province, Jeju recorded the highest figure of 2.5 cases, which was followed by Incheon (2.4 cases), Gangwon (2.3 cases) and Chungnam (2.3 cases).

[Table] Number of divorces and crude divorce rate by province (2015-2016)

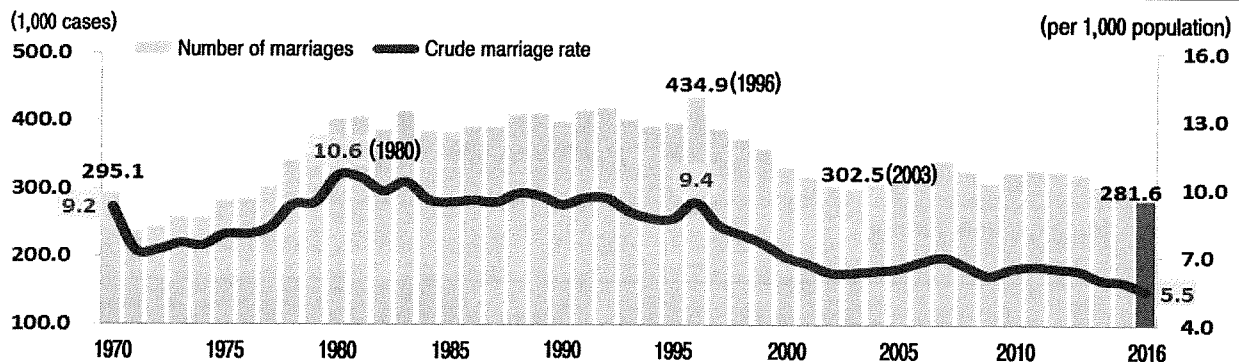
(Unit: case, %, per 1,000 population)

	Number of divorces						Crude divorce rate		
	2015	Percent	2016	Percent	Year-on-year		2015	2016	Year-on-year change
					Change	Percent change			
The nation*	109,153	100.0	107,328	100.0	-1,825	-1.7	2.1	2.1	0.0
Seoul	18,176	16.7	17,777	16.6	-399	-2.2	1.8	1.8	0.0
Busan	6,649	6.1	6,859	6.4	210	3.2	1.9	2.0	0.1
Daegu	4,497	4.1	4,383	4.1	-114	-2.5	1.8	1.8	0.0
Incheon	7,116	6.5	7,097	6.6	-19	-0.3	2.5	2.4	-0.1
Gwangju	2,842	2.6	2,817	2.6	-25	-0.9	1.9	1.9	0.0
Daejeon	2,999	2.7	2,890	2.7	-109	-3.6	2.0	1.9	-0.1
Ulsan	2,406	2.2	2,520	2.3	114	4.7	2.1	2.2	0.1
Sejong	324	0.3	343	0.3	19	5.9	1.8	1.5	-0.3
Gyeonggi	27,688	25.4	26,723	24.9	-965	-3.5	2.2	2.1	-0.1
Gangwon	3,484	3.2	3,482	3.2	-2	-0.1	2.3	2.3	0.0
Chungbuk	3,486	3.2	3,446	3.2	-40	-1.1	2.2	2.2	0.0
Chungnam	4,724	4.3	4,682	4.4	-42	-0.9	2.3	2.3	0.0
Jeonbuk	3,755	3.4	3,979	3.7	224	6.0	2.0	2.1	0.1
Jeonnam	4,033	3.7	3,965	3.7	-68	-1.7	2.1	2.1	0.0
Gyeongbuk	5,348	4.9	5,375	5.0	27	0.5	2.0	2.0	0.0
Gyeongnam	7,368	6.8	7,486	7.0	118	1.6	2.2	2.2	0.0
Jeju	1,447	1.3	1,552	1.4	105	7.3	2.4	2.5	0.1

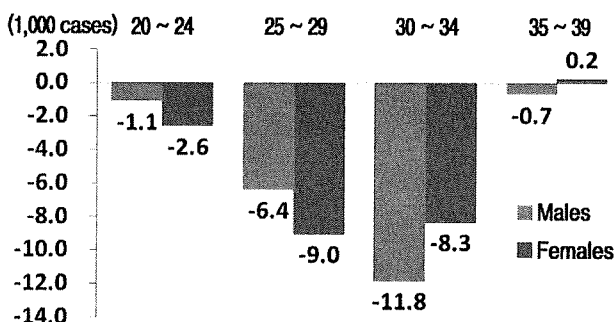
* Including overseas divorces

[Marriage Statistics in 2016]

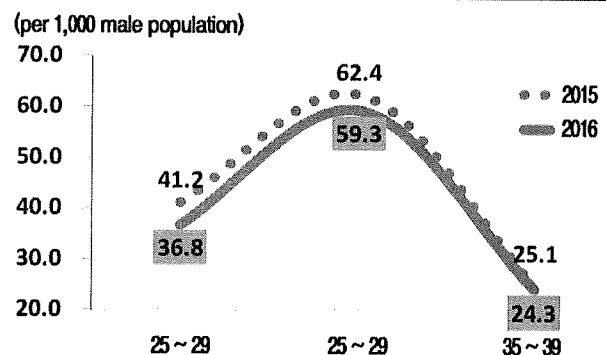
Number of marriages and crude marriage rate (1970-2016)



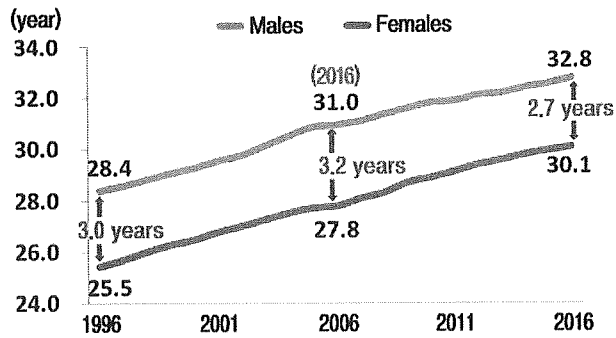
Change in the number of marriages by age group (2016)



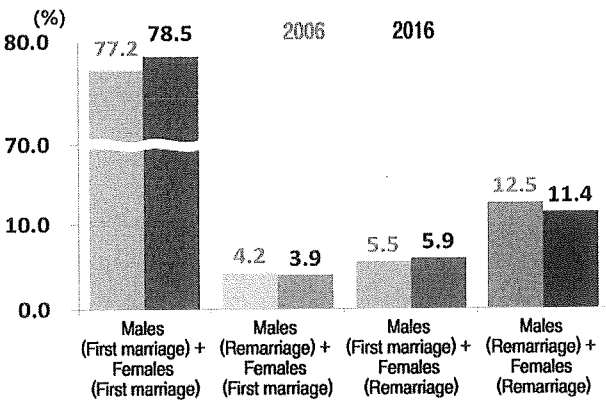
Marriage rate by age group of males (2016)



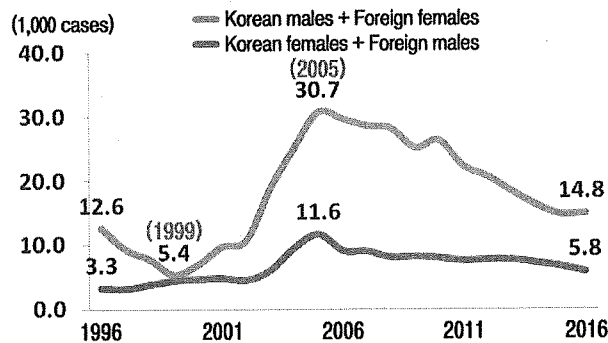
Mean age at first marriage (1996-2016)



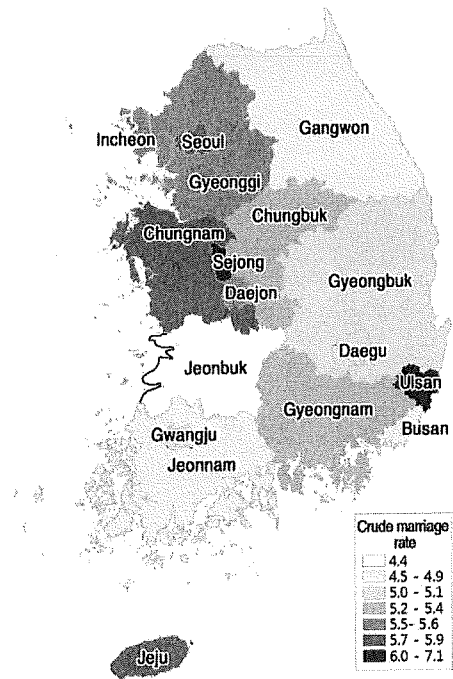
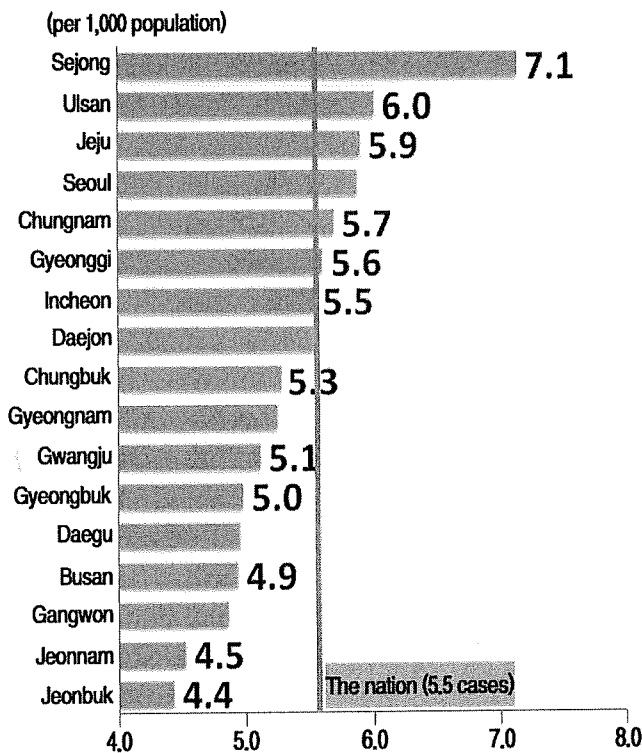
Composition by marriage type (2006, 2016)



Number of marriages with a foreign spouse (1996-2016)

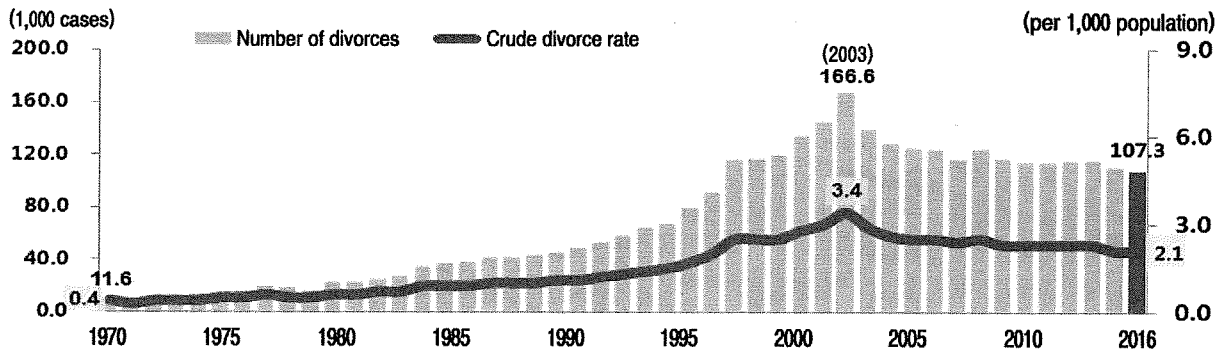


Crude marriage rate by province (2016)

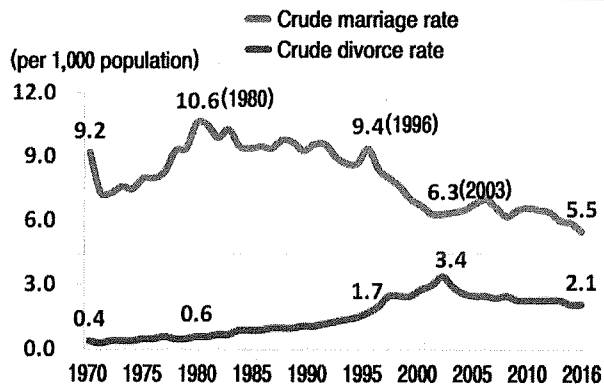


[Divorce Statistics in 2016]

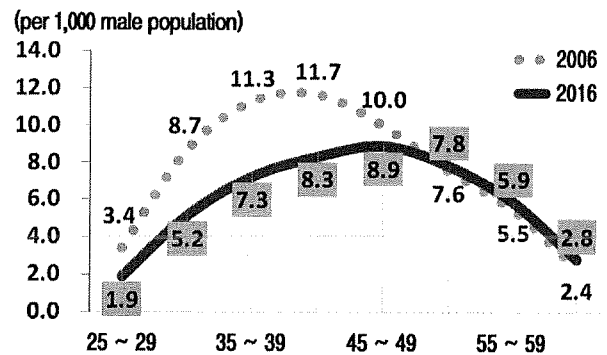
Number of divorces and crude divorce rate (1970-2016)



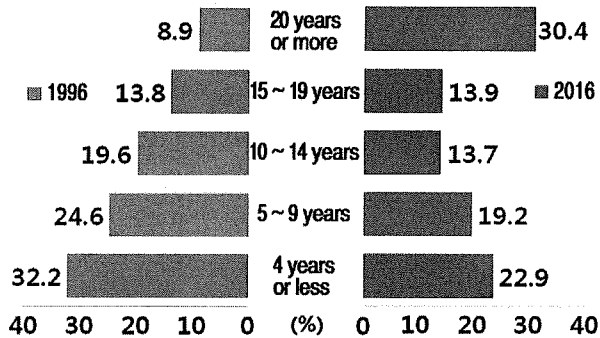
Crude marriage rate and crude divorce rate (1970-2016)



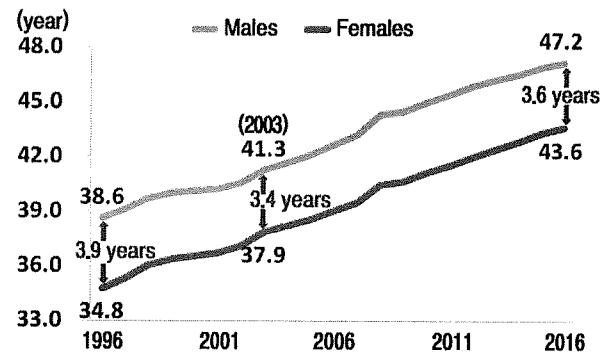
Divorce rate by age group of males (2006, 2016)



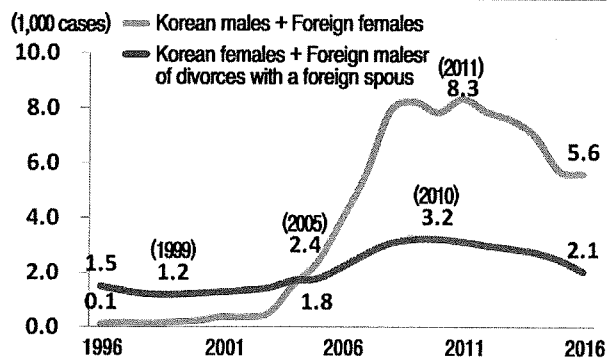
Composition of divorces by mean duration of marriage (1996, 2016)



Mean age at divorce (1996-2016)

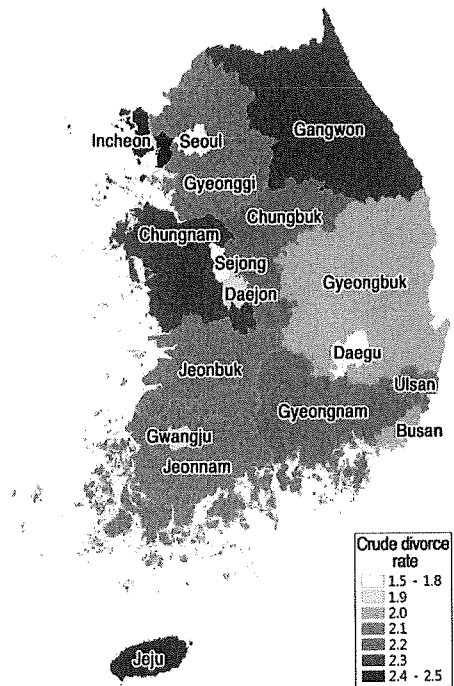
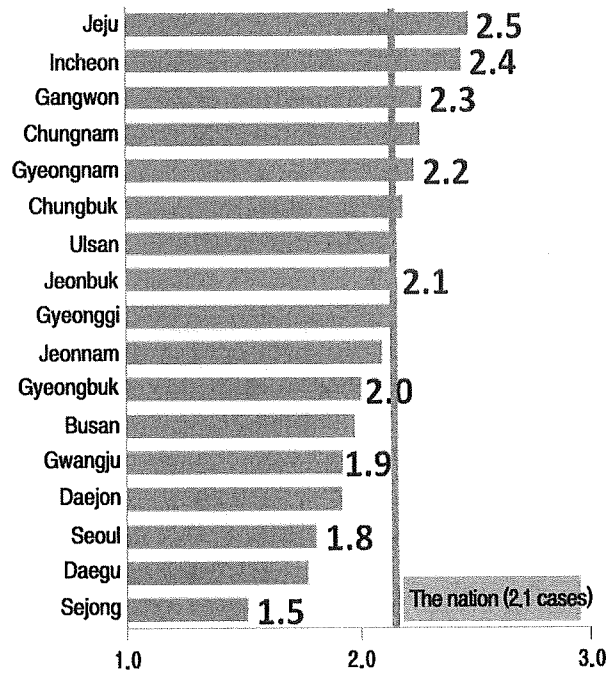


Number of divorces with a foreign spouse (1996-2016)



Crude divorce rate by province (2016)

(per 1,000 population)



Marriage and Divorce Statistics in 2015

I. Marriage

The number of marriages went down by 0.9 percent (2.7 thousand cases) to 302.8 thousand cases in 2015.

- The crude marriage rate (the number of marriages per 1,000 population) stood at 5.9 cases in 2015, which recorded the lowest figure after the first-time statistical production in 1970.

[Table] Number of marriages and crude marriage rate (2005-2015)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of marriages (thousand cases)	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1	322.8	305.5	302.8
Change (thousand cases)	5.7	16.3	12.9	-15.8	-18.0	16.3	3.0	-2.0	-4.3	-17.3	-2.7
Percent (%)	1.8	5.2	3.9	-4.6	-5.5	5.3	0.9	-0.6	-1.3	-5.4	-0.9
Crude marriage rate*	6.5	6.8	7.0	6.6	6.2	6.5	6.6	6.5	6.4	6.0	5.9

* The number of marriages per 1,000 population

- The couples of 'males at first marriage and females at first marriage' occupied 78.7 percent of the total marriages. The couples of 'males at remarriage and females at remarriage' occupied 11.5 percent of the total marriages.
- The mean age at first marriage for males was 32.6 years in 2015, up 0.2 year from 2014. The mean age at first marriage for females was 30.0 years in 2015, up 0.2 year from 2014.
- The mean age at first marriage for females exceeded 30 years for the first time.

[Table] Mean age at first marriage and remarriage (2005-2015)

(Unit: year)

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Change*	
													From 2014	From 2005
First marriage	Males	30.9	31.0	31.1	31.4	31.6	31.8	31.9	32.1	32.2	32.4	32.6	0.2	1.7
	Females	27.7	27.8	28.1	28.3	28.7	28.9	29.1	29.4	29.6	29.8	30.0	0.2	2.2
Remarriage	Males	44.1	44.4	44.8	45.0	45.7	46.1	46.3	46.6	46.8	47.1	47.6	0.5	3.5
	Females	39.6	39.7	40.1	40.3	41.1	41.6	41.9	42.3	42.5	43.0	43.5	0.5	3.9

* Rounded to 2 decimal places

- Older female couples at first marriage occupied 16.3 percent of the total marriages, which showed an ever-increasing trend.
- Older male couples occupied 67.6 percent of the total marriages, which showed a decreasing trend.

- The number of marriages with foreign spouses declined by 8.8 percent (2 thousand cases) to 21.3 thousand cases in 2015.

- In 2015, marriages with a foreign spouse occupied 7.0 percent of the total marriages, down 0.6%p from 2014.

[Table] Marriage with a foreign spouse (2005-2015)

(Unit: thousand cases, %)

	2005	2006	2007	2008	2009	2010	2011
Number of marriages	314.3	330.6	343.6	327.7	309.8	326.1	329.1
Marriage with a foreign spouse	42.4	38.8	37.6	36.2	33.3	34.2	29.8
Korean males and foreign females	30.7	29.7	28.6	28.2	25.1	26.3	22.3
Korean females and foreign males	11.6	9.1	9.0	8.0	8.2	8.0	7.5
	2012	2013	2014	2015	Percent	Year-on-year percent change	
Number of marriages	327.1	322.8	305.5	302.8	100.0	-0.9	
Marriage with a foreign spouse	28.3	26.0	23.3	21.3	7.0	-8.8	
Korean males and foreign females	20.6	18.3	16.2	14.7	4.8	-9.1	
Korean females and foreign males	7.7	7.7	7.2	6.6	2.2	-7.9	

- As for the crude marriage rate by province, Sejong recorded the highest figures of 8.2 cases, which was followed by Seoul (6.5 cases) and Ulsan (6.4 cases).

[Table] Number of marriages and crude marriage rate by province (2014-2015)

(Unit: case, %, per 1,000 population)

	Number of marriages						Crude marriage rate		
	2014	Percent	2015	Percent	Change	Percent change	2014	2015	Year-on-year change
The nation*	305,507	100.0	302,828	100.0	-2,679	-0.9	6.0	5.9	-0.1
Seoul	64,823	21.2	64,193	21.2	-630	-1.0	6.5	6.5	0.0
Busan	18,927	6.2	18,553	6.1	-374	-2.0	5.4	5.3	-0.1
Daegu	12,552	4.1	12,545	4.1	-7	-0.1	5.1	5.1	0.0
Incheon	17,251	5.6	17,118	5.7	-133	-0.8	6.0	5.9	-0.1
Gwangju	8,213	2.7	7,945	2.6	-268	-3.3	5.6	5.4	-0.2
Daejeon	9,118	3.0	8,805	2.9	-313	-3.4	6.0	5.8	-0.2
Ulsan	7,674	2.5	7,483	2.5	-191	-2.5	6.6	6.4	-0.2
Sejong	920	0.3	1,498	0.5	578	62.8	6.7	8.2	1.5
Gyeonggi	74,306	24.3	73,950	24.4	-356	-0.5	6.1	6.0	-0.1
Gangwon	7,785	2.5	7,876	2.6	91	1.2	5.1	5.1	0.0
Chungbuk	8,774	2.9	8,872	2.9	98	1.1	5.6	5.6	0.0
Chungnam	12,040	3.9	12,331	4.1	291	2.4	5.9	6.0	0.1
Jeonbuk	9,211	3.0	9,060	3.0	-151	-1.6	5.0	4.9	-0.1
Jeonnam	9,357	3.1	9,275	3.1	-82	-0.9	4.9	4.9	0.0
Gyeongbuk	14,183	4.6	14,273	4.7	90	0.6	5.3	5.3	0.0
Gyeongnam	19,056	6.2	18,671	6.2	-385	-2.0	5.7	5.6	-0.1
Jeju	3,593	1.2	3,676	1.2	83	2.3	6.0	6.0	0.0

* Including overseas marriages

- The mean age at first marriage for males and females in Seoul was 33.0 years and 30.8 years, respectively, which recorded the highest figure.

[Table] Mean age at marriage by province (2014-2015)

(Unit: year)

	Mean age at first marriage						Mean age at remarriage					
	2014		2015		Year-on-year change**		2014		2015		Year-on-year change**	
	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females	Males	Females
The nation*	32.4	29.8	32.6	30.0	0.2	0.2	47.1	43.0	47.6	43.5	0.5	0.5
Seoul	32.8	30.7	33.0	30.8	0.1	0.1	48.1	44.4	48.5	45.0	0.4	0.6
Busan	32.7	30.4	32.9	30.5	0.2	0.2	47.7	43.6	48.6	44.9	0.9	1.3
Daegu	32.3	30.0	32.5	30.2	0.2	0.2	47.0	43.3	47.2	43.6	0.2	0.4
Incheon	32.3	29.6	32.5	29.9	0.2	0.2	47.0	43.3	47.5	44.1	0.5	0.8
Gwangju	32.5	29.9	32.8	30.1	0.3	0.2	46.9	42.7	46.2	42.4	-0.7	-0.3
Daejeon	32.1	29.7	32.3	29.8	0.1	0.1	46.4	42.9	47.8	43.9	1.4	1.1
Ulsan	32.0	29.6	32.0	29.7	-0.1	0.1	45.6	42.4	46.1	42.2	0.5	-0.2
Sejong	32.9	29.8	32.5	30.3	-0.4	0.5	46.5	42.7	47.3	42.4	0.7	-0.3
Gyeonggi	32.4	29.9	32.6	30.0	0.1	0.1	46.9	43.3	47.4	43.8	0.5	0.5
Gangwon	32.2	29.4	32.2	29.6	0.0	0.2	47.3	43.7	48.1	44.1	0.8	0.4
Chungbuk	31.9	29.1	32.2	29.5	0.3	0.4	46.7	42.5	47.2	42.9	0.5	0.3
Chungnam	32.0	29.0	32.1	29.2	0.0	0.2	46.1	42.1	47.2	43.1	1.1	1.0
Jeonbuk	32.3	29.4	32.6	29.4	0.3	0.0	46.9	42.4	47.5	42.9	0.6	0.5
Jeonnam	32.3	29.2	32.6	29.3	0.3	0.2	47.7	43.5	47.6	43.0	0.0	-0.6
Gyeongbuk	32.0	29.5	32.3	29.5	0.3	0.1	47.2	42.7	47.8	43.4	0.6	0.7
Gyeongnam	32.2	29.6	32.3	29.8	0.1	0.1	47.0	43.1	47.5	42.9	0.5	-0.2
Jeju	32.4	29.8	32.8	30.1	0.4	0.3	46.8	42.6	47.4	43.7	0.6	1.1

* Including overseas marriages

** Rounded to 2 decimal places

II. Divorce

The number of divorces went down by 5.5 percent (6.4 thousand cases) to 109.2 thousand cases in 2015.

- The crude divorce rate (the number of divorces per 1,000 population) stood at 2.1 cases in 2015, which recorded the lowest figure after recording 2.0 cases in 1997.
- The divorce rate of married people (the number of divorces per 1,000 married population) stood at 4.4 cases in 2015, which dropped by 0.3 case from 2014.

[Table] Number of divorces, crude divorce rate and divorce rate of married people (2005-2015)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of divorces (thousand cases)	128.0	124.5	124.1	116.5	124.0	116.9	114.3	114.3	115.3	115.5	109.2
Change (thousand cases)	-10.9	-3.5	-0.5	-7.5	7.5	-7.1	-2.6	0.0	1.0	0.2	-6.4
Percent change (%)	-7.8	-2.7	-0.4	-6.1	6.4	-5.8	-2.2	0.0	0.9	0.2	-5.5
Crude divorce rate*	2.6	2.5	2.5	2.4	2.5	2.3	2.3	2.3	2.3	2.3	2.1
Divorce rate of married people**	5.5	5.3	5.2	4.9	5.2	4.8	4.7	4.7	4.7	4.7	4.4

* Per 1,000 population

** Per 1,000 married population aged 15 or more

- The mean age at divorce for males and females was 46.9 years and 43.3 years, respectively. These figures showed an upward trend.

[Table] Mean age at divorce (2005-2015)

(Unit: year)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Change*	
												From 2014	From 2005
Males	42.1	42.6	43.2	44.3	44.5	45.0	45.4	45.9	46.2	46.5	46.9	0.4	4.9
Females	38.6	39.0	39.5	40.5	40.7	41.1	41.5	42.0	42.4	42.8	43.3	0.5	4.8

* Rounded to 2 decimal places

- The mean duration of marriage before getting divorced was 14.6 years in 2015, up 0.3 year from the previous year.
- The duration of '20 years or more' of marriage occupied the highest share at 29.9 percent, which was followed by the duration of 'less than 5 years' (22.6 percent).

[Table] Number of divorces by mean duration of marriage before getting divorced (2005-2015)

(Unit: thousand cases, %, year)

	2005		2006	2007	2008	2009	2010
		Percent					
Total*	128.0	(100.0)	124.5	124.1	116.5	124.0	116.9
Less than 5 years	33.1	(25.9)	33.0	33.7	33.1	33.7	31.5
5 to 9 years	28.5	(22.3)	27.3	25.5	21.7	23.6	22.0
10 to 14 years	23.6	(18.4)	22.4	21.7	18.3	20.0	18.6
15 to 19 years	18.9	(14.8)	18.0	18.3	16.5	18.4	16.9
20 years or more	23.9	(18.6)	23.8	25.0	26.9	28.3	27.8
- 20 to 24 years	12.6	(9.8)	12.0	11.7	11.9	12.8	12.6
- 25 to 29 years	6.5	(5.0)	6.7	7.2	7.9	8.3	7.7
- 30 years or more	4.8	(3.7)	5.2	6.1	7.1	7.2	7.5
Mean duration of marriage	12.0	-	12.1	12.3	12.8	12.9	13.0

	2011	2012	2013	2014	2015	Year-on-year	
						Percent	percent change
Total*	114.3	114.3	115.3	115.5	109.2	100.0	-5.5
Less than 5 years	30.7	28.2	27.3	27.2	24.7	22.6	-9.2
5 to 9 years	21.7	21.5	21.5	22.0	20.8	19.1	-5.3
10 to 14 years	17.4	17.7	16.9	16.3	14.9	13.6	-8.7
15 to 19 years	16.2	16.6	17.2	17.0	16.2	14.8	-4.5
20 years or more	28.3	30.2	32.4	33.1	32.6	29.9	-1.6
- 20 to 24 years	12.6	13.6	14.4	14.2	13.4	12.3	-5.7
- 25 to 29 years	7.7	8.0	8.7	8.6	8.8	8.1	2.2
- 30 years or more	7.9	8.6	9.4	10.3	10.4	9.6	1.1
Mean duration of marriage	13.2	13.7	14.1	14.3	14.6	-	-

* Including 'Unidentified'

- The number of divorces from foreign spouses declined by 15.6 percent (1.5 thousand cases) to 8.2 thousand cases in 2015.
- In 2015, divorces from foreign spouses occupied 7.5 percent of the total divorces, down 0.9%p from 2014.

[Table] Divorce from a foreign spouse (2005-2015)

(Unit: thousand cases, %)

	2005	2006	2007	2008	2009	2010	2011
Number of divorces	128.0	124.5	124.1	116.5	124.0	116.9	114.3
Divorce from a foreign spouse	4.2	6.1	8.3	11.0	11.5	11.1	11.5
Korean males and foreign females	2.4	3.9	5.6	7.9	8.2	7.9	8.3
Korean females and foreign males	1.8	2.2	2.7	3.1	3.2	3.2	3.1
	2012	2013	2014	2015	Percent	Year-on-year percent change	
Number of divorces	114.3	115.3	115.5	109.2	100.0	-5.5	
Divorce from a foreign spouse	10.9	10.5	9.8	8.2	7.5	-15.6	
Korean males and foreign females	7.9	7.6	7.0	5.7	5.3	-17.9	
Korean females and foreign males	3.0	2.9	2.8	2.5	2.3	-9.5	

- As for the crude divorce rate by province, Incheon recorded the highest figure of 2.5 cases, which was followed by Jeju (2.4 cases), Chungnam (2.3 cases) and Gangwon (2.3 cases).

[Table] Number of divorces and crude divorce rate by province (2014-2015)

(Unit: case, %, per 1,000 population)

	Number of divorces						Crude divorce rate		
	2014	Percent	2015	Percent	Year-on-year		2014	2015	Year-on-year change
					Change	Percent change			
The nation*	115,510	100.0	109,153	100.0	-6,357	-5.5	2.3	2.1	-0.1
Seoul	19,477	16.9	18,176	16.7	-1,301	-6.7	2.0	1.8	-0.1
Busan	7,345	6.4	6,649	6.1	-696	-9.5	2.1	1.9	-0.2
Daegu	4,794	4.2	4,497	4.1	-297	-6.2	1.9	1.8	-0.1
Incheon	7,417	6.4	7,116	6.5	-301	-4.1	2.6	2.5	-0.1
Gwangju	3,051	2.6	2,842	2.6	-209	-6.9	2.1	1.9	-0.1
Daejeon	3,221	2.8	2,999	2.7	-222	-6.9	2.1	2.0	-0.1
Ulsan	2,731	2.4	2,406	2.2	-325	-11.9	2.4	2.1	-0.3
Sejong	280	0.2	324	0.3	44	15.7	2.0	1.8	-0.3
Gyeonggi	28,892	25.0	27,688	25.4	-1,204	-4.2	2.4	2.2	-0.1
Gangwon	3,630	3.1	3,484	3.2	-146	-4.0	2.4	2.3	-0.1
Chungbuk	3,671	3.2	3,486	3.2	-185	-5.0	2.3	2.2	-0.1
Chungnam	4,915	4.3	4,724	4.3	-191	-3.9	2.4	2.3	-0.1
Jeonbuk	4,091	3.5	3,755	3.4	-336	-8.2	2.2	2.0	-0.2
Jeonnam	4,135	3.6	4,033	3.7	-102	-2.5	2.2	2.1	-0.1
Gyeongbuk	5,503	4.8	5,348	4.9	-155	-2.8	2.1	2.0	-0.1
Gyeongnam	7,602	6.6	7,368	6.8	-234	-3.1	2.3	2.2	-0.1
Jeju	1,530	1.3	1,447	1.3	-83	-5.4	2.6	2.4	-0.2

* Including overseas divorces

Marriage and Divorce Statistics in 2014

I . Marriage

The number of marriages fell by 5.4 percent from the previous year. The mean age at first marriage was 32.4 years for males and 29.8 years for females.

- The number of marriages went down by 17.3 thousand cases (5.4 percent) to 305.5 thousand cases in 2014.
- The crude marriage rate (the number of marriages per 1,000 people) stood at 6.0 cases in 2014, down 0.4 from 2013.

[Table] Number of marriages and crude marriage rate

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of marriages (thousand cases)	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1	322.8	305.5
Change (thousand cases)	6.1	5.7	16.3	12.9	-15.8	-18.0	16.3	3.0	-2.0	-4.3	-17.3
Percent (%)	2.0	1.8	5.2	3.9	-4.6	-5.5	5.3	0.9	-0.6	-1.3	-5.4
Crude marriage rate*	6.4	6.5	6.8	7.0	6.6	6.2	6.5	6.6	6.5	6.4	6.0

* The number of marriages per 1,000 population

- The mean age at first marriage for males was 32.4 years in 2014, up 0.2 from 2013. The mean age at first marriage for females was 29.8 years in 2014, up 0.2 from 2013.

[Table] Mean age at first marriage and remarriage

(Unit: year)

		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Change	
													From 2013	From 2004
First marriage	Males	30.5	30.9	31.0	31.1	31.4	31.6	31.8	31.9	32.1	32.2	32.4	0.2	1.9
	Females	27.5	27.7	27.8	28.1	28.3	28.7	28.9	29.1	29.4	29.6	29.8	0.2	2.3
Remarriage	Males	43.8	44.1	44.4	44.8	45.0	45.7	46.1	46.3	46.6	46.8	47.1	0.4	3.4
	Females	39.2	39.6	39.7	40.1	40.3	41.1	41.6	41.9	42.3	42.5	43.0	0.5	3.8

- The number of marriages with foreign spouses declined by 2.6 thousand cases (10.2 percent) to 23.3 thousand cases in 2014.
- The marriage between Korean males and foreign females fell by 11.8 percent from the previous year.
- The marriage between Korean females and foreign males dropped by 6.4 percent from the previous year.

[Table] Marriage with a foreign spouse

(Unit: thousand cases, %)

	2004	2005	2006	2007	2008	2009	2010	2011
Number of marriages	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1
Marriage with a foreign spouse	34.6	42.4	38.8	37.6	36.2	33.3	34.2	29.8
Korean males and foreign females	25.1	30.7	29.7	28.6	28.2	25.1	26.3	22.3
Korean females and foreign males	9.5	11.6	9.1	9.0	8.0	8.2	8.0	7.5
	2012	2013	2014	Percent		Year-on-year percent change		
Number of marriages	327.1	322.8	305.5	100.0		-5.4		
Marriage with a foreign spouse	28.3	26.0	23.3	7.6		-10.2		
Korean males and foreign females	20.6	18.3	16.2	5.3		-11.8		
Korean females and foreign males	7.7	7.7	7.2	2.3		-6.4		

II. Divorce

The number of divorces rose by 0.2 percent from 2013. The mean duration of marriage for divorces was 14.3 years in 2014.

- The number of divorces was 115.5 thousand cases in 2014, which rose by 0.2 thousand cases (or 0.2 percent) from 2013.
- The crude divorce rate (the number of divorces per 1,000 people) stood at 2.3 cases in 2014, which remained the same as the previous year.

[Table] Number of divorces, crude divorce rate and divorce rate of married people

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of divorces (thousand cases)	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3	114.3	115.3	115.5
Change (thousand cases)	-27.7	-10.9	-3.5	-0.5	-7.5	7.5	-7.1	-2.6	0.0	1.0	0.2
Percent change (%)	-16.6	-7.8	-2.7	-0.4	-6.1	6.4	-5.8	-2.2	0.0	0.9	0.2
Crude divorce rate*	2.9	2.6	2.5	2.5	2.4	2.5	2.3	2.3	2.3	2.3	2.3
Divorce rate of married people**	6.0	5.5	5.3	5.2	4.9	5.2	4.8	4.7	4.7	4.7	4.7

* The number of divorces per 1,000 population

** The number of divorces per 1,000 married population aged 15 and over

- The mean duration of marriage for divorces was 14.3 years in 2014, up 0.2 year from the previous year.

[Table] Number of divorces by mean duration of marriage at divorce

(Unit: thousand cases, % year)

	2004	Percent	2005	2006	2007	2008	2009
Total*	138.9	(100.0)	128.0	124.5	124.1	116.5	124.0
Less than 4 years	35.0	(25.2)	33.1	33.0	33.7	33.1	33.7
5 to 9 years	31.8	(22.9)	28.5	27.3	25.5	21.7	23.6
10 to 14 years	26.3	(18.9)	23.6	22.4	21.7	18.3	20.0
15 to 19 years	20.5	(14.7)	18.9	18.0	18.3	16.5	18.4
20 years or more	25.4	(18.3)	23.9	23.8	25.0	26.9	28.3
- 20 to 24 years	14.2	(10.2)	12.6	12.0	11.7	11.9	12.8
- 25 to 29 years	6.6	(4.7)	6.5	6.7	7.2	7.9	8.3
- 30 years or more	4.6	(3.3)	4.8	5.2	6.1	7.1	7.2
Mean duration of marriage	12.0	-	12.0	12.1	12.3	12.8	12.9

	2010	2011	2012	2013	2014	Percent	Year-on-year percent change
* Total*	116.9	114.3	114.3	115.3	115.5	100.0	0.2
Less than 4 years	31.5	30.7	28.2	27.3	27.2	23.5	-0.5
5 to 9 years	22.0	21.7	21.5	21.5	22.0	19.0	2.0
10 to 14 years	18.6	17.4	17.7	16.9	16.3	14.1	-3.4
15 to 19 years	16.9	16.2	16.6	17.2	17.0	14.7	-1.2
20 years or more	27.8	28.3	30.2	32.4	33.1	28.7	2.2
- 20 to 24 years	12.6	12.6	13.6	14.4	14.2	12.3	-1.1
- 25 to 29 years	7.7	7.7	8.0	8.7	8.6	7.5	-0.9
- 30 years or more	7.5	7.9	8.6	9.4	10.3	8.9	10.1
Mean duration of marriage	13.0	13.2	13.7	14.1	14.3	-	1.5

* Including 'Unidentified'

- The divorced couples who didn't have a minor child occupied 50.3 percent of the total divorced couples.

[Table] Number of divorces by minor child

(Unit: thousand cases, %)

	2004	Percent	2005	2006	2007	2008	2009
Total*	138.9	(100.0)	128.0	124.5	124.1	116.5	124.0
Have a minor child	91.1	(65.6)	81.2	75.7	72.8	63.0	68.5
1 person	39.1	(28.1)	35.0	33.4	32.2	28.5	31.5
2 persons	45.5	(32.8)	40.2	36.9	35.2	29.8	31.9
3 persons or more	6.5	(4.7)	6.0	5.5	5.4	4.7	5.1
Have no minor child	46.4	(33.4)	45.4	48.2	50.9	52.9	55.1

	2010	2011	2012	2013	2014	Percent	Year-on-year percent change
Total*	116.9	114.3	114.3	115.3	115.5	100.0	0.2
Have a minor child	62.9	60.1	60.3	59.0	57.2	49.5	-3.1
1 person	30.0	29.0	29.9	30.1	30.0	25.9	-0.5
2 persons	28.3	26.7	26.2	24.7	23.3	20.2	-5.4
3 persons or more	4.6	4.4	4.1	4.2	3.9	3.3	-8.4
Have no minor child	53.7	53.9	53.7	56.1	58.1	50.3	3.5

* Including 'Unidentified'

○ The number of divorces from foreign spouses declined by 0.7 thousand cases (6.9 percent) to 9.8 thousand cases in 2014.

- In 2014, divorces from foreign spouses occupied 8.4 percent of the total divorces, down 0.6%p from 2013.

[Table] Divorce from a foreign spouse

(Unit: thousand cases, %)

	2004	2005	2006	2007	2008	2009	2010	2011
Number of divorces	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3
Divorce from a foreign spouse	3.3	4.2	6.1	8.3	11.0	11.5	11.1	11.5
Korean males and foreign females	1.6	2.4	3.9	5.6	7.9	8.2	7.9	8.3
Korean females and foreign males	1.7	1.8	2.2	2.7	3.1	3.2	3.2	3.1
	2012	2013	2014	Year-on-year percent change				
				Percent				
Number of divorces	114.3	115.3	115.5	100.0	0.2			
Divorce from a foreign spouse	10.9	10.5	9.8	8.4	-6.9			
Korean males and foreign females	7.9	7.6	7.0	6.1	-7.8			
Korean females and foreign males	3.0	2.9	2.8	2.4	-4.7			

Marriage and Divorce Statistics in 2013

I. Marriage

The number of marriages fell by 1.3 percent from the previous year. The mean age at first marriage was 32.2 years for males and 29.6 years for females.

- The number of marriages went down by 4.3 thousand cases (1.3 percent) to 322.8 thousand cases in 2013.
- The crude marriage rate (the number of marriages per 1,000 people) stood at 6.4 cases in 2013, down 0.1 from 2012.

[Table] Number of marriages and crude marriage rate

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of marriages (thousand cases)	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1	322.8
Change (thousand cases)	-2.4	6.1	5.7	16.3	12.9	-15.8	-18.0	16.3	3.0	-2.0	-4.3
Percent (%)	-0.8	2.0	1.8	5.2	3.9	-4.6	-5.5	5.3	0.9	-0.6	-1.3
Crude marriage rate*	6.3	6.4	6.5	6.8	7.0	6.6	6.2	6.5	6.6	6.5	6.4

* The number of marriages per 1,000 population

- The mean age at first marriage for males was 32.2 years in 2013, up 0.1 from 2012. The mean age at first marriage for females was 29.6 years in 2013, up 0.2 from 2012.

[Table] Mean age at first marriage and remarriage

(Unit: year)

		2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Year-on-year change
First marriage	Males	30.1	30.5	30.9	31.0	31.1	31.4	31.6	31.8	31.9	32.1	32.2	0.1
	Females	27.3	27.5	27.7	27.8	28.1	28.3	28.7	28.9	29.1	29.4	29.6	0.2
Remarriage	Males	42.8	43.8	44.1	44.4	44.8	45.0	45.7	46.1	46.3	46.6	46.8	0.1
	Females	38.3	39.2	39.6	39.7	40.1	40.3	41.1	41.6	41.9	42.3	42.5	0.2

- The number of marriages with foreign spouses declined by 2.4 thousand to 26.0 thousand cases in 2013.
- The marriage between Korean males and foreign females fell by 11.3 percent from the previous year.
- The marriage between Korean females and foreign males dropped by 0.4 percent from the previous year.

[Table] Marriage with a foreign spouse

(Unit: thousand cases, %)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Percent	Year-on-year percent change
Number of marriages	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1	322.8	100.0	-1.3
Marriage with a foreign spouse	24.8	34.6	42.4	38.8	37.6	36.2	33.3	34.2	29.8	28.3	26.0	8.0	-8.3
■ Korean males and foreign females	18.8	25.1	30.7	29.7	28.6	28.2	25.1	26.3	22.3	20.6	18.3	5.7	-11.3
■ Korean females and foreign males	6.0	9.5	11.6	9.1	9.0	8.0	8.2	8.0	7.5	7.7	7.7	2.4	-0.4

II. Divorce

The number of divorces rose by 0.9 percent from 2012. The mean duration of marriage for divorces was 14.1 years in 2013.

- The number of divorces was 115.3 thousand cases in 2013, which rose by 1 thousand cased (or 0.9 percent) from 2012.
- The crude divorce rate (the number of divorces per 1,000 people) stood at 2.3 cases in 2013, which remained the same as the previous year.

[Table] Number of divorces, crude divorce rate and divorce rate of married people

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of divorces (thousand cases)	166.6	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3	114.3	115.3
Change (thousand cases)	21.7	-27.7	-10.9	-3.5	-0.5	-7.5	7.5	-7.1	-2.6	0.0	1.0
Percent change (%)	15.0	-16.6	-7.8	-2.7	-0.4	-6.1	6.4	-5.8	-2.2	0.0	0.9
Crude divorce rate*	3.4	2.9	2.6	2.5	2.5	2.4	2.5	2.3	2.3	2.3	2.3
Divorce rate of married people**	7.2	6.0	5.5	5.3	5.2	4.9	5.2	4.8	4.7	4.7	4.7

* The number of divorces per 1,000 population

** The number of divorces per 1,000 married population aged 15 and over

- The mean duration of marriage for divorces was 14.1 years in 2013, up 0.4 year from the previous year.
- The divorces whose duration of marriage was 15 years or more showed a year-on-year increase. In the meantime, the divorces whose duration of marriage was 14 years or less showed a year-on-year decrease.
- The number of divorces from foreign spouses declined by 3.7 percent to 10.5 thousand cases in 2013.

- In 2013, divorces from foreign spouses occupied 9.1 percent of the total divorces, down 0.4%p from 9.5 percent in 2012.

[Table] Divorce from a foreign spouse

(Unit: thousand cases, %)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Percent	Year-on-year percent change
Number of divorces	166.6	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3	114.3	115.3	100.0	0.9
Divorce from a foreign spouse	2.0	3.3	4.2	6.1	8.3	11.0	11.5	11.1	11.5	10.9	10.5	9.1	-3.7
■ Korean males and foreign females	0.5	1.6	2.4	3.9	5.6	7.9	8.2	7.9	8.3	7.9	7.6	6.6	-3.7
■ Korean females and foreign males	1.5	1.7	1.8	2.2	2.7	3.1	3.2	3.2	3.1	3.0	2.9	2.5	-3.9

Marriage and Divorce Statistics in 2012

I. Marriage

The number of marriages fell by 0.6 percent from the previous year. The mean age at first marriage was 32.1 years for males and 29.4 years for females.

- The number of marriages went down by 2 thousand cases (0.6 percent) to 327.1 thousand cases in 2012.
- The crude marriage rate (the number of marriages per 1,000 people) stood at 6.5 cases in 2012, down 0.1 from 2011.

[Table] Number of marriages and crude marriage rate

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of marriages (thousand cases)	304.9	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1
Change (thousand cases)	-13.5	-2.4	6.1	5.7	16.3	12.9	-15.8	-18.0	16.3	3.0	-2.0
Percent (%)	-4.2	-0.8	2.0	1.8	5.2	3.9	-4.6	-5.5	5.3	0.9	-0.6
Crude marriage rate*	6.3	6.3	6.4	6.5	6.8	7.0	6.6	6.2	6.5	6.6	6.5

* The number of marriages per 1,000 population

- The mean age at first marriage for males was 32.1 years in 2012, up 0.2 from 2011. The mean age at first marriage for females was 29.4 years in 2012, up 0.3 from 2011.

[Table] Mean age at first marriage and remarriage

(Unit: year)

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Year-on-year change
First marriage	Males	29.8	30.1	30.5	30.9	31.0	31.1	31.4	31.6	31.8	31.9	32.1	0.2
	Females	27.0	27.3	27.5	27.7	27.8	28.1	28.3	28.7	28.9	29.1	29.4	0.3
Remarriage	Males	42.1	42.8	43.8	44.1	44.4	44.8	45.0	45.7	46.1	46.3	46.6	0.3
	Females	37.9	38.3	39.2	39.6	39.7	40.1	40.3	41.1	41.6	41.9	42.3	0.4

- The number of marriages with foreign spouses declined by 1.4 thousand to 28.3 thousand cases in 2012.
- The marriage between Korean males and foreign females fell by 7.3 percent from the previous year.
- The marriage between Korean females and foreign males rose by 2.5 percent from the previous year.

[Table] Marriage with a foreign spouse

(Unit: thousand cases, %)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Percent	Year-on-year percent change
Number of marriages	304.9	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1	327.1	100.0	-0.6
Marriage with a foreign spouse	15.2	24.8	34.6	42.4	38.8	37.6	36.2	33.3	34.2	29.8	28.3	8.7	-4.8
■ Korean males and foreign females	10.7	18.8	25.1	30.7	29.7	28.6	28.2	25.1	26.3	22.3	20.6	6.3	-7.3
■ Korean females and foreign males	4.5	6.0	9.5	11.6	9.1	9.0	8.0	8.2	8.0	7.5	7.7	2.4	2.5

II. Divorce

The number of divorces remained the same as the previous year. The mean duration of marriage for divorces was 13.7 years in 2012.

- The number of divorces was 114.3 thousand cases in 2012, which remained the same as the previous year.
- The crude divorce rate (the number of divorces per 1,000 people) stood at 2.3 cases in 2012, which remained the same as the previous year.

[Table] Number of divorces, crude divorce rate and divorce rate of married people

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of divorces (thousand cases)	144.9	166.6	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3	114.3
Change (thousand cases)	10.3	21.7	-27.7	-10.9	-3.5	-0.5	-7.5	7.5	-7.1	-2.6	0.0
Percent change (%)	7.7	15.0	-16.6	-7.8	-2.7	-0.4	-6.1	6.4	-5.8	-2.2	0.0
Crude divorce rate*	3.0	3.4	2.9	2.6	2.5	2.5	2.4	2.5	2.3	2.3	2.3
Divorce rate of married people**	6.3	7.2	6.0	5.5	5.3	5.2	4.9	5.2	4.8	4.7	4.7

* The number of divorces per 1,000 population

** The number of divorces per 1,000 married population aged 15 and over

- The mean duration of marriage for divorces was 13.7 years in 2012, up 0.5 year from the previous year.
- The divorces whose duration of marriage was 20 years or more occupied 26.4 percent. For the first time, this share was higher than the share (24.7 percent) of divorces whose duration of marriage was 4 years or less.
- The number of divorces with foreign spouses declined by 5.3 percent to 10.9 thousand cases in 2012.
- Divorces with foreign spouses occupied 9.5 percent in 2012, down 0.5%p from 10.1 percent in 2011.

Marriage and Divorce Statistics in 2011

I. Marriage

The number of marriages rose by 0.9 percent from the previous year. The average age of the first marriage was 31.9 years for males and 29.1 years for females.

- The number of marriages went up by 3 thousand cases (0.9 percent) to 329.1 thousand cases in 2011.
- The crude marriage rate (the number of marriages per 1,000 people) stood at 6.6 in 2011, up 0.1 from 2010.

< Table > Number of marriages and crude marriage rate

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of marriages (thousand cases)	318.4	304.9	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1	329.1
Change (thousand cases)	-13.7	-13.5	-2.4	6.1	5.7	16.3	12.9	-15.8	-18.0	16.3	3.0
Percent (%)	-4.1	-4.2	-0.8	2.0	1.8	5.2	3.9	-4.6	-5.5	5.3	0.9
Crude marriage rate*	6.7	6.3	6.3	6.4	6.5	6.8	7.0	6.6	6.2	6.5	6.6

* The number of marriages per 1,000 population

- The average age of the first marriage for males was 31.9 years in 2011, up 0.1 from 2010. The average age of the first marriage for females was 29.1 years in 2011, up 0.2 from 2010.

< Table > Average age of the first marriage and remarriage

(Unit: age)

		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
The first marriage	Males	29.5	29.8	30.1	30.5	30.9	31.0	31.1	31.4	31.6	31.8	31.9
	Females	26.8	27.0	27.3	27.5	27.7	27.8	28.1	28.3	28.7	28.9	29.1
Remarriage	Males	42.1	42.1	42.8	43.8	44.1	44.4	44.8	45.0	45.7	46.1	46.3
	Females	37.5	37.9	38.3	39.2	39.6	39.7	40.1	40.3	41.1	41.6	41.9

- The number of marriages with foreign spouses declined by 4.5 thousand to 29.7 thousand cases in 2011.
- Marriages with foreign spouses occupied 9.0 percent in 2011, down 1.5%p from 10.5 percent in 2010.

< Table > Marriage with a foreign spouse

(Unit: case, %)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of marriages	318,407	304,877	302,503	308,598	314,304	330,634	343,559	327,715	309,759	326,104	329,087
Marriage with a foreign spouse	14,523	15,202	24,775	34,640	42,356	38,759	37,560	36,204	33,300	34,235	29,762
(Share of marriages with a foreign spouse)	(4.6)	(5.0)	(8.2)	(11.2)	(13.5)	(11.7)	(10.9)	(11.0)	(10.8)	(10.5)	(9.0)
Change	2,918	679	9,573	9,865	7,716	-3,597	-1,199	-1,356	-2,904	935	-4,473
Percent change	25.1	4.7	63.0	39.8	22.3	-8.5	-3.1	-3.6	-8.0	2.8	-13.1
■ Korean males and foreign females	9,684	10,698	18,750	25,105	30,719	29,665	28,580	28,163	25,142	26,274	22,265
Percent change	39.4	10.5	75.3	33.9	22.4	-3.4	-3.7	-1.5	-10.7	4.5	-15.3
■ Korean females and foreign males	4,839	4,504	6,025	9,535	11,637	9,094	8,980	8,041	8,158	7,961	7,497
Percent change	3.8	-6.9	33.8	58.3	22.0	-21.9	-1.3	-10.5	1.5	-2.4	-5.8

II. Divorce

The number of divorces fell by 2.2 percent from the previous year. The divorce rate of married people recorded 4.7 cases in 2011.

- The number of divorces went down by 2.6 thousand cases (2.2 percent) to 114.3 thousand cases in 2011.
- The crude divorce rate (the number of divorces per 1,000 people) stood at 2.3 in 2011, remaining the same level as the previous year.
- The divorce rate of married people* recorded 4.7 cases in 2011. The number of divorces per 1,000 married couples was 9.4 couples, which recorded the lowest figure since 2001.

* The number of divorces per 1,000 married population aged 15 or more

< Table > Number of divorces, crude divorce rate and divorce rate of married people

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of divorces (thousand cases)	134.6	144.9	166.6	138.9	128.0	124.5	124.1	116.5	124.0	116.9	114.3
Change (thousand cases)	15.2	10.3	21.7	-27.7	-10.9	-3.5	-0.5	-7.5	7.5	-7.1	-2.6
Percent change (%)	12.7	7.7	15.0	-16.6	-7.8	-2.7	-0.4	-6.1	6.4	-5.8	-2.2
Crude divorce rate	2.8	3.0	3.4	2.9	2.6	2.5	2.5	2.4	2.5	2.3	2.3
Divorce rate of married people	5.9	6.3	7.2	6.0	5.5	5.3p	5.2p	4.9p	5.2p	4.8p	4.7p
(Number of divorces per 1,000 married couples)	11.8	12.6	14.4	12.0	10.9	10.6p	10.5p	9.8p	10.3p	9.7p	9.4p

p: preliminary

- The number of divorces with foreign spouses grew by 0.4 thousand cases to 11.5 thousand cases in 2011.

- Divorces with foreign spouses occupied 10.1 percent in 2011, up 0.6%p from 9.5 percent in 2010.

< Table > Divorces with a foreign spouse

(Unit: case, %)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number of divorces	134,608	144,910	166,617	138,932	128,035	124,524	124,072	116,535	123,999	116,858	114,284
Divorces with a foreign spouse	1,694	1,744	2,012	3,300	4,171	6,136	8,294	10,980	1,473	11,088	11,495
(Share of divorces with a foreign spouse)	(1.3)	(1.2)	(1.2)	(2.4)	(3.3)	(4.9)	(6.7)	(9.4)	(9.3)	(9.5)	(10.1)
Change	196	50	268	1,288	871	1,965	2,158	2,686	493	-385	407
Percent change	13.1	3.0	15.4	64.0	26.4	47.1	35.2	32.4	4.5	-3.4	3.7
■ Korean males and foreign females	387	380	547	1,567	2,382	3,933	5,609	7,901	8,246	7,852	8,349
Percent change	56.7	-1.8	43.9	186.5	52	65.1	42.6	40.9	4.4	-4.8	6.3
■ Korean females and foreign males	1,307	1,364	1,465	1,733	1,789	2,203	2,685	3,079	3,227	3,236	3,146
Percent change	4.5	4.4	7.4	18.3	3.2	23.1	21.9	14.7	4.8	0.3	-2.8

Marriage and Divorce Statistics in 2010

The number of marriages rose to 326 thousand cases in 2010. The average age of the first marriage was 31.8 years for males and 28.9 years for females.

- The number of marriages went up by 16.3 thousand cases (5.3 percent) to 326.1 thousand cases in 2010.
- The crude marriage rate (the number of marriages per 1,000 people) stood at 6.5 in 2010, up 0.3 from 2009.

< Table > Number of marriages and crude marriage rate

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Number of marriages (thousand cases)	332.1	318.4	304.9	302.5	308.6	314.3	330.6	343.6	327.7	309.8	326.1
Change (thousand cases)	-28.3	-13.7	-13.5	-2.4	6.1	5.7	16.3	12.9	-15.8	-18.0	16.3
Percent (%)	-7.9	-4.1	-4.2	-0.8	2.0	1.8	5.2	3.9	-4.6	-5.5	5.3
Crude marriage rate*	7.0	6.7	6.3	6.3	6.4	6.5	6.8	7.0	6.6	6.2	6.5

* The number of marriages per 1,000 population

- The average age of the first marriage for males was 31.8 years in 2010, up 0.2 from 2009. The average age of the first marriage for females was 28.9 years in 2010, up 0.2 from 2009.

< Table > Average age of the first marriage and remarriages

(Unit: age)

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
The first marriage	Males	29.3	29.5	29.8	30.1	30.5	30.9	31.0	31.1	31.4	31.6	31.8
	Females	26.5	26.8	27.0	27.3	27.5	27.7	27.8	28.1	28.3	28.7	28.9
Remarriage	Males	42.0	42.1	42.1	42.8	43.8	44.1	44.4	44.8	45.0	45.7	46.1
	Females	37.4	37.5	37.9	38.3	39.2	39.6	39.7	40.1	40.3	41.1	41.6

- The number of marriages with foreign spouses rose by 0.9 thousand to 34.2 thousand cases in 2010.
- The share of marriages with foreign spouses decreased from 10.8 percent in 2009 to 10.5 percent in 2010.

< Table > Marriage with foreign spouse

(Unit: case, %)

	2000	2001	2002	2003	2004	2005
Number of marriages	332,090	318,407	304,877	302,503	308,598	314,304
Marriage with foreign spouse (Share of marriages with foreign spouses)	11,605 (3.5)	14,523 (4.6)	15,202 (5.0)	24,776 (8.2)	34,640 (11.2)	42,356 (13.5)
Change	1,782	2,918	679	9,574	9,864	7,716
Percent change	18.1	25.1	4.7	63.0	39.8	22.3
■ Korean males and foreign females	6,945	9,684	10,698	18,751	25,105	30,719
Percent change	29.3	39.4	10.5	75.3	33.9	22.4
■ Korean females and foreign males	4,660	4,839	4,504	6,025	9,535	11,637
Per Percent change	4.6	3.8	-6.9	33.8	58.3	22.0
	2006	2007	2008	2009	2010	
Number of marriages	330,634	343,559	327,715	309,759	326,104	
Marriage with foreign spouse (Share of marriages with foreign spouses)	38,759 (11.7)	37,560 (10.9)	36,204 (11.0)	33,300 (10.8)	34,235 (10.5)	
Change	-3,597	-1,199	-1,356	-2,904	935	
Percent change	-8.5	-3.1	-3.6	-8.0	2.8	
■ Korean males and foreign females	29,665	28,580	28,163	25,142	26,274	
Percent change	-3.4	-3.7	-1.5	-10.7	4.5	
■ Korean females and foreign males	9,094	8,980	8,041	8,158	7,961	
Per Percent change	-21.9	-1.3	-10.5	1.5	-2.4	

The number of divorces fell to 117 thousand cases in 2010. The divorce rate of married people recorded 4.7 cases in 2010.

- The number of divorces went down by 7.1 thousand cases (5.8 percent) to 116.9 thousand cases in 2010.
- The crude divorce rate (the number of divorces per 1,000 people) stood at 2.3 in 2010, down 0.2 from 2009.

< Table > Number of divorces, crude divorce rate and divorce rate of married people

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Number of divorces (thousand cases)	119.5	134.6	144.9	166.6	138.9	128.0	124.5	124.1	116.5	124.0	116.9
Change (thousand cases)	2.0	15.2	10.3	21.7	-27.7	-10.9	-3.5	-0.5	-7.5	7.5	-7.1
Percent change (%)	1.7	12.7	7.7	15.0	-16.6	-7.8	-2.7	-0.4	-6.1	6.4	-5.8
Crude divorce rate	2.5	2.8	3.0	3.4	2.9	2.6	2.5	2.5	2.4	2.5	2.3
Divorce rate of married people	5.3	5.9	6.3	7.2	6.0	5.5	5.3p	5.2p	4.8p	5.1p	4.7p
(Number of divorces per 1,000 married couples)	10.5	11.8	12.6	14.4	12.0	10.9	10.6p	10.4p	9.7p	10.2p	9.5p

p: preliminary

- The divorce rate of married people* recorded 4.7 cases in 2010. The number of divorces per 1,000 married couples was 9.5 couples, which recorded the lowest figure since 2000.
- The number of divorces with foreign spouses dropped by 0.4 thousand cases to 11.2 thousand cases in 2010.
- The share of divorces with foreign spouses grew from 9.4 percent in 2009 to 9.6 percent in 2010.

< Table > Divorces with foreign spouses

(Unit: case, %)

	2000	2001	2002	2003	2004	2005
Number of divorces	119,455	134,608	144,910	166,617	138,932	128,035
Divorces with foreign spouses	1,498	1,694	1,744	2,012	3,300	4,171
(Share of divorces with foreign spouses)	(1.3)	(1.3)	(1.2)	(1.2)	(2.4)	(3.3)
Change	96	196	50	268	1,288	871
Percent change	6.8	13.1	3.0	15.4	64.0	26.4
■ Korean males and foreign females	247	387	380	547	1,567	2,382
Percent change	24.7	56.7	-1.8	43.9	186.5	52
■ Korean females and foreign males	1,251	1,307	1,364	1,465	1,733	1,789
Percent change	3.9	4.5	4.4	7.4	18.3	3.2
	2006	2007	2008	2009	2010	
Number of divorces	124,524	124,072	116,535	123,999	116,858	
Divorces with foreign spouses	6,136	8,671	11,255	11,692	11,245	
(Share of divorces with foreign spouses)	(4.9)	(7.0)	(9.7)	(9.4)	(9.6)	
Change	1,965	2,535	2,584	437	-447	
Percent change	47.1	41.3	29.8	3.9	-3.8	
■ Korean males and foreign females	3,933	5,707	7,962	8,300	7,904	
Percent change	65.1	45.1	39.5	4.2	-4.8	
■ Korean females and foreign males	2,203	2,964	3,293	3,392	3,341	
Percent change	23.1	34.5	11.1	3.0	-1.5	

附件三

地方法院刑事第一審案件觸犯刑法第239條之被告裁判結果

年	終結件數	被告人數	科刑情形				無罪	不受理	撤回	其他
			計	六月以下	逾六月至一年以下	拘役				
108	384	539	295	295			26	212	1	5
107	393	553	309	309			17	221	3	3
106	411	589	308	306		2	33	235	2	11
105	397	566	311	310		1	33	217		5
104	389	555	316	316			29	202	6	2
103	392	558	308	308			23	221	4	2
102	403	572	303	303			24	228	3	14
101	393	556	331	331			20	195	1	9
100	428	606	342	339	2	1	29	224	4	7

註：(1)終結件數係依全案罪名為妨害婚姻及家庭罪且被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

(2)被告人數係依被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

資料來源：台灣高等法院彙總統計系統

地方法院刑事第二審簡易案件觸犯刑法第239條之被告裁判結果

年	終結件數	被告人數	科刑情形			無罪	不受理	撤回	其他
			計	六月以下	逾六月至一年以下				
108	34	43	37	37		1	1	4	
107	50	65	57	57		2	3	3	
106	50	66	56	56			3	7	
105	44	55	49	48	1	1	1	4	
104	39	52	48	48				4	
103	48	59	45	45		1	2	10	1
102	47	59	42	42			2	15	
101	50	67	56	56				11	
100	52	64	54	54				10	

註：(1)終結件數係依全案罪名為妨害婚姻及家庭罪且被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

(2)被告人數係依被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

資料來源：各地方法院統計系統資料庫

高等法院刑事第二審案件觸犯刑法第239條之被告裁判結果

年	終結件數	被告人數	科刑情形			無罪	不受理	免除其刑	撤回	其他
			計	六月以下	逾六月至一年以下					
108	60	80	44	44		23	8		2	3
107	51	75	51	51		8	12		2	2
106	87	113	79	79		14	12	1	1	6
105	71	106	79	79		20	6			1
104	68	86	48	48		27	8		2	1
103	74	97	65	65		15	15			2
102	78	99	74	73	1	16	7			2
101	80	95	66	66		17	6		5	1
100	66	87	58	56	2	18	2		5	4

註：(1)終結件數係依全案罪名為妨害婚姻及家庭罪且被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

(2)被告人數係依被告最重罪為妨害婚姻及家庭罪並觸犯刑法239條統計。

資料來源：台灣高等法院彙總統計系統

