

To: Introduction to Korean Law

From: CHUNG, Won-sang
KIM, Jin-yeop
SO, Inkyung

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Re: The Judicial Structure and Its Operation in Korea

'Supreme Court of Korea, judicial System of Korea', by So, Inkyung

'The Roles of judges in Korea', by Kim, jin-yeop

'Toward a More Principled Prosecutorial Discretion',

by Chung, Won sang

THE JUDICIAL STRUCTURE AND ITS OPERATION IN KOREA

A. Organization of the Judiciary

1. Courts

'There are three tiers of courts in Korea'. the Supreme Court; the Appellate Courts; and the District Courts(including the Family Court). The courts are granted general jurisdiction to preside over civil, criminal, administrative, electoral and other litigious cases, according to the Court Organization Act, and are further allowed to decide non-contentious cases and other matters that fall under their jurisdiction in accordance with relevant provision of other laws. The Military Courts may be established under the Constitution as special courts to exercise jurisdiction over military criminal cases.

(1) Supreme Court

The Supreme Court is the highest judicial tribunal of the nation and consists of a Chief Justice and thirteen Justices. As the court of last resort, the Supreme Court hears appeals from judgements or rulings rendered by the Appellate Courts and the appellate divisions of the District Courts or the Family Court. Furthermore, it has the authority to view the decisions of the appellate military courts as well as having exclusive jurisdiction over the validity of the election of the President or a member of the National Assembly.

The Constitution has vested in the Supreme Court the authority for judicial administration as well as the power to establish regulations regarding the internal discipline of the courts, the administration of judicial affairs and trial procedures. Such power is exercised by the Justices Council, which consists of all the Justices of the Supreme Court.

In civil cases, the grounds for appeal to the Supreme Court have been limited to the constitutional and legal questions material to the judgement appealed from. The six specific grounds for appeal are:

- 1) a court to render judgements has not been constituted in compliance with the law,
- 2) a judge who was precluded by virtue of law from participating in a judgement has participated therein,
- 3) provisions relating to exclusive jurisdiction have been contravened,
- 4) there was a defeat in the powers of the legal representative or attorney or in the special authority of an attorney for doing proceeding acts,
- 5) the provisions regarding open pleading have been violated,
- 6) a judgement has not been supported with reasons or there exists inconsistency in the reasoning.

In criminal cases. an appeal to the Supreme Court may be made on the following grounds:

- 1) a violation of the Constitution, law, order or regulation material to the judgement of the lower court,
- 2) the abolition, alteration or excuse of penalty,
- 3) a grave error in fact-finding or extreme impropriety in the sentencing in cases where the death penalty, a life imprisonment, or an imprisonment of more than ten years has been imposed.

(2) Appellate Court

The Appellate Courts are the intermediate appellate courts with appellate jurisdiction over judgements or rulings rendered by a three-judge panel of a District Court or a Family Court. They, however, have original jurisdiction over cases contesting administrative actions. The cases before the Appellate Court are heard by a panel of three judges, which is called a division, and there are three classes of divisions: civil, criminal and special. (the special division deals with administrative cases.)

(3) District Court

The District Courts have both criminal and civil jurisdiction, as well as having jurisdiction over various non contentions cases such as the reorganization or liquidation of business corporations, and the registration of real property, bankruptcy proceedings, and of corporate matters. Usually, a single judge presides over a District Court trial, except in certain categories of cases, where three judges, collectively referred to as a collegiate body or a collegiate division, are required to sit.

The District Court is generally the court of original jurisdiction. However, it also has jurisdiction over appeals filed against the decisions of a single judge of a District Court, a branch court or a municipal court. This appellate jurisdiction is exercised by the collegiate divisions of three judges. For civil matters, the judge may order a case to be settled in a conciliation proceeding before a conciliation committee composed of a judge and two or more lay persons. If not successfully conciliated, the judge may render a decision that the judge deems reasonable after weighting both parties' positions. Both parties are entitled, however, to file an appeal against that decision, at which time the case is transferred to a trial proceeding.

(4) Family Court

The Family Court is a specialized court dealing exclusively with family matters and juvenile delinquency cases. The Family Court has jurisdiction over all disputes and conflicts within the family and other related affairs of legal significance. As a general rule, a domestic relations case is first referred to a conciliation proceeding, and only if the parties are unable to reconcile, is the case transferred to a trial proceeding.

2. Judges

To become a judge in Korea, the first step is to pass the judicial examination and then complete the two-year training program at the Judicial Research and Training Institute. The extremely low passing rate of 2.19 % partly explains the excellent quality of judges in Korea and the tremendous trust of the Korean people in the judicial system. The Chief Justice is appointed by the President with the consent of the National Assembly, while the other Justices of the Supreme Court are also appointed by the President, upon a recommendation of the Chief Justice and with the consent of the National Assembly. The judges of the lower courts, on the other hand, are appointed by the Chief Justice with the consent of the Supreme Court Justice Council.

To insure that judges are subordinate to no other agency of the state, the personal status is legally guaranteed as follows:

- 1) Dismissal of judges from Office,
- 2) Disciplinary Action against judges,

3) Political Neutrality of judges.

3. Judicial Administration

(1) Supreme Court Justices Council

The Supreme Court Justices Council consists of all 14 Justices and is presided by the Chief Justice. It considers the appointments of lower court judges, the establishment of the Supreme Court Rules and Regulations, the requests for budgets, the expenditure of reserve funds, the settlement of accounts, and other matters considered to be of particular importance and referred to them by the Chief Justice.

(2) Ministry of Court Administration

The Ministry of Court Administration is an instrument established by the Supreme Court to oversee the general administrative affairs of the court. It handles such matters as the fundamental planning of national judicial administration, the computerization of the judiciary, the continuing education of judges, the personnel management, the finance and accounting of the courts, the supervision of the registries of real property, corporations and family relations, and the conduct of the judicial scriveners and marshals. It also conducts research on legal questions, compiles and publishes the opinions of the Supreme Court and provides statistical analyses.

(3) Judicial Research and Training Institute

The Judicial Research and Training Institute has been an instrument of the Supreme Court to provide a theoretical and practical education to the legal apprentices admitted by the Supreme Court, from among those who have passed the National Judicial Examination. As a rule, a two-year program at the Institute is required for admission into the legal profession.

(4) Training Institute for Court Clerks

The Training Institute for Court Clerks aims to provide court clerks, court stenographers, court secretaries and other officials with the appropriate training and research programs necessary for the performance of their duties.

(5) Supreme Court Library

The Supreme Court Library has a collection of books, including foreign treaties, casebooks and periodicals.

B. Judicial Procedure

1. Civil Cases

The primary source of law regarding the civil litigation procedure is the Code of Civil Procedure, enacted in 1960 and revised extensively in 1990. Following the civil law tradition, no court is bound by the views of another court as a matter of law. However, there are certain *de jure and de facto* exceptions to this principle.

Civil lawsuits may be initiated in any District Court, branch court of a District Court, or municipal court, and the trial proceed as follows;

- 1) The filing of an complaint in the court by either the plaintiff or the attorney therof. The complaint must state the names of the parties and their legal representatives, the demand for relief, and the legal grounds for the claim.
- 2) Once receiving the complaint, the presiding judge will set a date for hearing and will summon the parties to appear, where the parties may appear in person or by counsel. Each party is responsible for presenting evidence in support of its arguments, and the judge may refer the case to a conciliation proceeding, if it is deemed appropriate.
- 3) At the end of a trial, the judge enters a written judgement stating the reasons for the decision. A judgement is not enforcible until it becomes final, but the court may declare a judgement provisionally enforceable.
- 4) A party who is dissatisfied with the judgement of the judge may appeal to the judge of the higher court.

2. Criminal Cases

The Code of Criminal Procedure, enacted in 1954, governs criminal procedure, which retains the characteristics of the continental legal system to a considerable extent, as well as adopting some quintessential elements of Anglo-American law.

The criminal actions are initiated with the procedure of investigation as follows.

- 1) The investigative authorities can arrest a suspect for detention only when they have acquired a warrant of detention issued by a judge, where the judge will only issue a warrant only if the suspect may attempt to escape or destroy evidence.
- 2) Upon ai-rest, a suspect is entitled to be infon-ned of the right to remain silent and the right to counsel. A detained suspect will be released if the suspect is not transferred to the public prosecutor within ten days, and the prosecutor must release the suspect unless an indictment is instituted within ten days. The present Constitution provides the detainee with the right to request a court review of the legality of his/her detention before an indictment is instituted.
- 3) With neither a grand jury system nor private prosecution, the public prosecutor has the exclusive authority to institute a criminal action, and he/she must state the name of the accused, the alleged crime, the alleged facts constituting the offense and the applicable statutory provisions in a written indictment filed with the court.
- 4) In a criminal action, a copy of the indictment must be served to each defendant or counsel thereof at least 5 days before the first session of the trial. The defendant has the right to remain silent during the hearing and shall not be physically restrained in the courtroom.

- 5) In Korea, without the jury system, the judge or panel of judges is the fact-finder, and if the defendant is found guilty, a sentence is entered. A guilty judgement depends on whether the facts against the defendant constitute a crime and whether the evidence is sufficient for conviction. In entering the judgement, the court must state the facts constituting the crime, the gist of the evidence and the applicable laws.
- 6) Either the defendant or the prosecutor may initiate an appeal against a judgement of first instance for a review of law or fact to the higher court.