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Compendium of JPRI Research Reports

: Highlights from 2014 – 2024 Publications



Judicial Policy Research Institute

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Judicial Policy
Research Institute

Preface



The Judicial Policy Research Institute (JPRI), established in 2014 as an independent research organization under the Supreme Court of Korea, is celebrating its 11th anniversary this year. It has remained committed to conducting research aimed at improving the judicial and trial system. Since its founding, the JPRI has published nearly 200 research reports in diverse fields such as the judicial system, the trial system, legal frameworks for Korean reunification, foreign judiciary studies, legal education, and court history, and has grown into Korea's leading institution for judicial policy research.

To pursue specialized and forward-looking research, the JPRI operates four thematic centers: Future Judiciary&Unification Judiciary Center, Foreign Judiciary Center, Integrated Judiciary&Legal Education Center and Judicial System Center. These centers collectively support initiatives to envision the judiciary of the future, explore improvements in the trial system through interdisciplinary collaboration between law and related disciplines, and conduct studies on judicial frameworks for future reunification. The JPRI also engages in international exchanges with foreign legal research bodies and develops public legal education programs.

The research reports produced through these efforts are the result of dedicated contributions by judge-researchers, Ph.D.-level professional researchers, research officers including senior court officials. These works have made meaningful contributions to both judicial policy development and improvements in trial practice.

Preface

The Compendium of JPRI Research Reports presents English abstracts of research reports published over the past eleven years. It serves to introduce the JPRI's research to international audiences and offers a comprehensive overview of the research themes, proposed improvements, and remaining challenges addressed in each report. We hope this volume will serve as a useful guide and an entry point for readers seeking a deeper understanding of Korea's judicial system and legal culture.

Looking ahead, the JPRI, as a think tank of the judiciary that is trusted and respected by the public, will remain committed to shaping a ideal future judiciary through balanced and systematic research that encompasses both reality and ideals, as well as practice and theory.

Lastly, I would like to extend my sincere appreciation to all the current and former researchers at the JPRI who contributed to the preparation of these research reports, as well as to the staff members whose support made this publication possible.

Thank you.

June 2025,

Seung-ryun Lee,

President of the Judicial Policy Research Institute

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JUDICIAL POLICY RESEARCH INSTITUTE

Chapter 1

Overview



Judicial Policy Research Institute

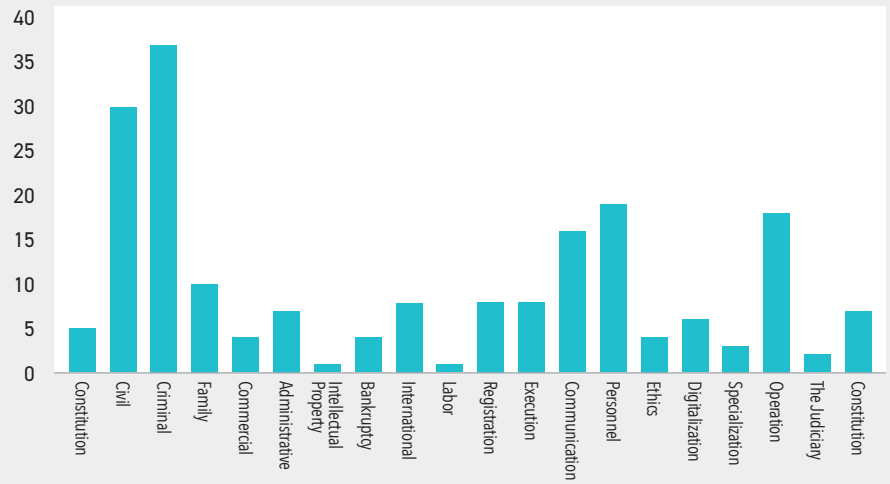
Classification of Research Reports by Topic

Classification of Research Reports by Topic (2014~2024)

(Unit: Volume)

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total	Proportion(%)
Constitution	1				1	1	1			1		5	2.5
Civil		1	7	4	3	3	2	2	5	1	2	30	15.1
Criminal	1	4	5	2	1	2	3	5	3	5	6	37	18.6
Family	1	1	1	1	2	2				1	1	10	5
Commercial					1		1	2				4	2
Administrative			1	1				1	1	2	1	7	3.5
Intellectual Property			1									1	0.5
Bankruptcy	1				1			1			1	4	2
International			1		1	1	1		2	2		8	4
Labor						1						1	0.5
Registration	1	1		1		1	2		1	1		8	4
Execution						1	1	1	2	1	2	8	4
Communication	2	7	1	1	3		1				1	16	8
Personnel			2	2	1	3	5	1		3	2	19	9.5
Ethics		1			1			1			1	4	2
Digitalization		1	1	1	1			1	1			6	3
Specialization								2	1			3	1.5
Operation			1			2	3	1	5	3	3	18	9
The Judiciary			1						1			2	1
Others		1		2	1	1	1			1		7	3.5
Total	7	17	22	15	17	18	21	18	22	21	20	198	

Total Number of Research Reports by Topic (2014~2024)



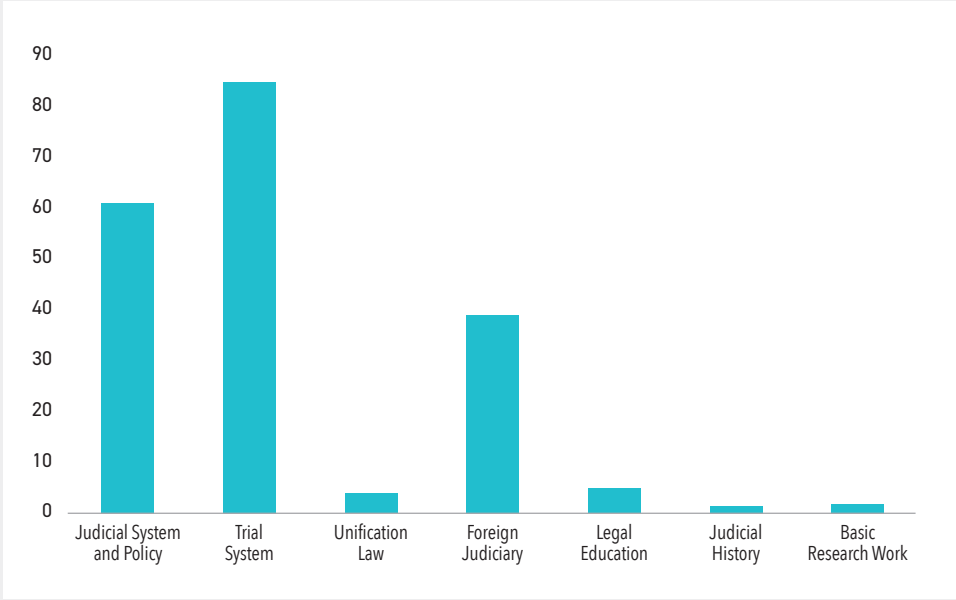
Classification of Research Reports by Field

Classification of Research Reports by Field (2014~2024)

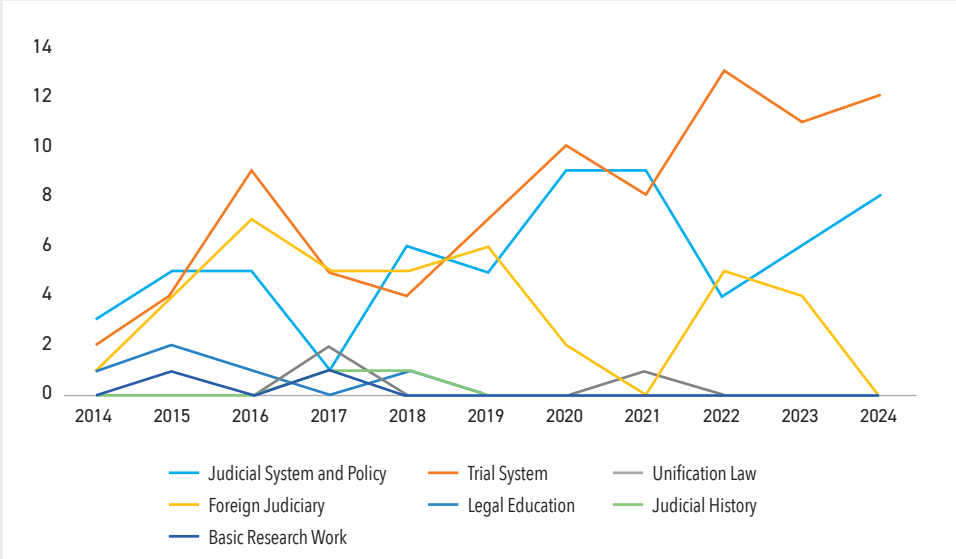
(Unit: Volume)

Year	Judicial System and Policy	Trial System	Unification Law	Foreign Judiciary	Legal Education	Judicial History	Basic Research Work	Total
2014	3	2		1	1			7
2015	5	4	1	4	2		1	17
2016	5	9		7	1			22
2017	1	5	2	5		1	1	15
2018	6	4		5	1	1		17
2019	5	7		6				18
2020	9	10		2				21
2021	9	8	1					18
2022	4	13		5				22
2023	6	11		4				21
2024	8	12						20
Total	61	85	4	39	5	2	2	198
Proportion(%)	30.8	42.9	2	19.6	2.5	1	1	

Total Number of Research Reports by Field (2014~2024)



Trends in Research Reports by Field (2014~2024)



Chapter 2

Classification of Research Reports by Topic



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1

The Study on the Austrian Judicial System (2014)

: Focusing on the Correlation Among the Supreme Court, the Administrative Court and the Constitutional Court

Tae-Ho KIM
Professional Researcher

This study analyzes the Austrian judicial system in terms of the constitutional provisions governing the relationship among its highest judicial authorities, which are comparable to those of Korea and rooted in a long-standing tradition of constitutional adjudication. Austria's apex judiciary is structured into three coequal institutions: the Supreme Court (Oberster Gerichtshof), the Administrative Court (Verwaltungsgerichtshof), and the Constitutional Court (Verfassungsgerichtshof), each holding constitutionally equal status. The main objective of this study is to examine the Austrian Federal Constitutional Law to understand how these three apex courts distribute their respective functions, how they have resolved jurisdictional tensions—particularly between constitutional and administrative adjudication—and what implications the three significant constitutional amendments in 2008, 2012, and 2013 have had for the roles and interrelations among these courts.

The Constitutional Court holds the power of normative control over statutes and regulations. In contrast, the final resolution of individual and concrete cases is assigned to the Supreme Court, which functions as the court of last instance in civil and criminal matters, and the Administrative Court, which serves the same role for administrative cases. The legal interpretation made by one apex court does not bind the others.

In Austria, both the Constitutional Court and the Administrative Court have been involved in the judicial oversight of executive actions. Traditionally, when an administrative act was alleged to violate constitutional rights, a complaint was brought before the Constitutional Court, whereas violations of legal (statutory) rights were challenged before the Administrative Court. However, following the constitutional amendment of 2012 concerning administrative judicial reform, newly established administrative trial courts were assigned jurisdiction over administrative cases at the first instance. With this reform, first-instance administrative litigation now falls under the authority of these administrative courts. The former Asylum Court, which had temporarily taken over the function of the Administrative Court for asylum cases during the transitional period, has since been abolished. Currently, the Federal Administrative Court serves as the court of first instance for asylum matters as well. If a party seeks to challenge a decision of a first-instance administrative court, the appeal must be directed to the Constitutional Court if the reason involves a constitutional violation, or to the Administrative Court if the reason involves a violation of law. Thus, both courts exercise judicial control over non-final decisions of the administrative trial courts, with the Constitutional Court applying constitutional standards and the Administrative Court

applying legal standards. This dual-review system reflects Austria's distinctive approach to the judicial control of administrative action.

In Austria, the Supreme Court serves as the final court of appeal in civil and criminal proceedings. The Constitutional Court intervenes only when the constitutionality or legality of a legal norm, which forms the basis of a judgment, is referred to it for review. Prior to the 2013 constitutional amendment, such referrals could be made exclusively by the ordinary courts, meaning that constitutional or legal review of statutes and regulations was excluded in the absence of a court's request. Following the 2013 amendment, however, individuals involved in civil or criminal proceedings may also directly request the Constitutional Court to examine the constitutionality or legality of the applied norm after a first-instance judgment has been rendered. This system bears resemblance to the Korean constitutional complaint system under Article 68(2) of the Constitutional Court Act, which allows individuals to request a review of statutes deemed unconstitutional when directly applied in a court case.

The Austrian Federal Constitutional Law sets out in great detail the composition and powers of the Supreme Court, the Administrative Court, and the Constitutional Court—details that, in the Korean context, would typically be delegated to ordinary legislation. As such, it is difficult to conceive of institutional arrangements affecting the relationship among these apex courts that are not grounded in constitutional provisions. For instance, retroactive or provisional continuation of statutes declared unconstitutional is permitted based on express constitutional provisions, whereas so-called "modifying decisions" (Urteilsmodifikation)—a practice not explicitly provided for in the Federal Constitutional Law—have not been adopted in Austrian judicial practice.

2

A Study on Standards of Constitutional Review for Constitutional Judgment of Court (2018)

Jong-Youp LEE
Judge Researcher

The court carries out constitutional duties in trials and judgments that are not limited to constitutional judiciary functions directly endowed by certain constitutional provisions. Since the court is obliged to interpret and apply specific laws or provisions conforming to the Constitution, which is the supreme law of the country, its constitutional duties are extended to interpretation and application of the law, which is the essential role of the court. Furthermore, when interpreting and applying the law in relation to constitutional decisions, the court is bounded by 'a principle of constitutional interpretation of the law,' which denotes that the meaning of legal provisions may be reduced, excluded, supplemented and revised within the constitutional scope. In this sense, constitutional interpretation of the law has equivalent functions and effects with norm control.

In that regard, the court should ensure that the interpretation of the law rendered by itself is consistent with the Constitution, insofar as the functions and effects of the Constitution are projected onto the ordinary interpretation of the law, and thus there needs to establish standards of review to determine the unconstitutionality.

The 'standards of review on unconstitutionality' include 1) 'the scale or method' to examine and analyze the unconstitutionality and 2) 'the intensity' to scrutinize the unconstitutionality. For the standards of review in constitutional adjudication, the types and intensity may vary depending on the importance of the fundamental right at issue, the severity of the infringements, and etc.

This research expounds general standards of review on unconstitutionality, such as the principle of proportionality, the rule against retroactive legislation, the rule against blanket delegation, and the principle of due process, and then examines the issues on the standards of review that arise in individual areas of fundamental rights, especially of equal protection, freedom of occupation, property rights, and social rights. Subsequently, this research analyzes how the aforementioned principles and the standards of review are reflected in practices of the Constitutional Court and the Judiciary via examinations of conflicting decisions made by both institutions towards the same object.

This research figures out that the elaboration and individualization of the Constitution are inevitable due to the high degree of abstractness of the Constitution rooted in the fundamental ideology. That is to say, the standards of review should be differentiated and individualized depending on the basic importance of each issue at stake and the nature of

the matter. The individualization would be a part of efforts to harmonize the realization of human dignity and value with other conflicting rights and principles.

This research also demonstrates that the court, in a few cases, though, tries to realize substantial protection of fundamental rights with a strong interest in constitutional remedies to the fundamental rights. Hopefully, this research can contribute to the active role of the court in realizing the Constitution in a true sense.

3

United States Supreme Court Jurisprudence on the Protection of Minority Rights (2019)

Hyun Jung SONG
Professional Researcher

It is no easy matter to protect the rights of minorities because to eliminate discrimination equates to defeat the unduly generalized stereotype or prejudice which has been ingrained into commonsense of the age. Because of the anti-majoritarian characteristics, issues concerning the protection of minorities would most likely arouse controversy in social and political arenas, especially in a democratic society resting upon the principles of majority rule. Yet, the concept of liberal democracy does not merely mean compliance with majority rule. The majority rule without the protection of minority rights is nothing more than formal democracy and tyranny of the majority alike.

The protection of minorities, of course, had best be made by legislative and executive bodies with democratic legitimacy, but due to the nature of the principles of democracy which include the majority rule, governmental decisions are likely to be made by the will of the majority, and the opinion of minorities tends to be marginalized by and large in the decision-making process. In this regard, an independent judiciary, as a power not elected by the people, that is, not affected by the majority rule, needs to be the "last resort" to protect the minority against majoritarianism.

The United States Supreme Court has long been consolidated the primary duty of the judiciary to protect minorities by establishing judgments and legal principles aiming at social integration based on diversity. Under the Due Process Clause and Equal Protection Clause, the Court has struck down laws that discriminate based on race, alienage, national origin, illegitimacy, gender, sexual orientation, etc., holding the tone of judicial activism. The experience of the United States Supreme Court, which has taken the lead in minority rights protection, implicates the importance of the Korean judiciary's role in realizing the social integration in a multicultural society, and in eliminating aversion and irrational discrimination against minorities. Therefore, as evidenced in the United States Supreme Court cases, this paper acquaints the people with the importance of the judiciary's role in the protection of minorities and suggests that the Korean judiciary plays a key role to protect minorities through active interpretation of (constitutional) law, proactively influencing important governmental decision-making and social changes with respect to minority issues.

4

Comparative Legal Research on Judicial Standards for Hate Speech (2020)

Hyun Jung SONG
Professional Researcher

Despite the seriousness of hate speech prevalent in our society, specific legislative and administrative measures to regulate hate speech have yet to be taken and a national consensus has not been reached in our country. Fortunately, in recent years, various fields such as academia, politics, media, and civic groups have begun to publicize the issue of hate speech along with the matters concerning freedom of expression, and the social efforts to resolve issues caused by hate speech have been continuing.

Korean society has been also actively engaged in regulatory discourses on hate speech issues which have widely spread recently, yet there is still a lack of systematic and concrete countermeasures, and the process to enact the related laws and regulations is progressing slowly. If the Korean courts maintain a non-intervention attitude toward hate speech for the lack of legislative grounds, it may give the impression that they allow hate speech without limits. In response, the Korean courts should raise awareness of hate speech by accumulating rulings that alarm the harmfulness of hate speech within the current legal system until the legislative basis is established, and contribute to protecting minority rights and interests from harm that hate speech leads to discrimination and exclusion of minority groups. Currently, the Korean courts deal with cases related to hate speech in fractional ways by criminal punishment for an insult(or defamation) crime, damages for illegal acts under civil law, examination of the legality of administrative dispositions, and so on. In this study, the comparative legal study seeks to suggest the Korean courts establish judicial standards that could apply in hate speech-related trials.

Hopefully, this study will contribute to the continued and clear message to the general public that the value of diversity should be encouraged in our society and that everyone has the right to equal dignity in cases involving hate speech.

5

Modern Meanings and Limitations of the Principle of Open Justice (2023)

Joo-Seok KIM
Senior Judge Researcher

This report summarizes the norms and discussions on the principle of open justice in Korea, and examines its modern meanings and limitations by researching relevant cases and discussions of major countries such as Japan, Germany, France, the United Kingdom, and the United States, as well as the International Criminal Court. Following such research, this report attempts at broadening the understanding of the principle of open trial and obtaining useful implications for its desirable operation and improvement.

In Korea, the principle of public trial is predicated on the Constitution to the effect that court hearings and judgments must be made public and referred to as a means of enhancing fairness in trials and securing public trust through public scrutiny. Exceptions to open hearings for the purpose of protecting national security, public safety and order or good morals are recognized. The indirect publicity is prohibited in principle, and the publicity of remote hearings, which have been expanded due to the pandemic, has become a new issue. Court records are open to the public only for final and conclusive cases. And all judgments are disclosed online in principle, with the personal information treated anonymously.

Major countries are trying to appropriately implement the principle of open justice under the legal and social environments surrounding themselves, but sometimes they are also experiencing trial and errors by exposing various problems. As the principle of open justice has been formed under various historical and normative backgrounds in each country, there are some differences in its approach and content, further arises various discussions.

In case of Japan, Article 82 of the Japanese Constitution stipulates a provision on the principle of public trial and also prescribes exceptions to the publicity of adversarial hearing. Private hearings of certain cases such as political crimes are prohibited. In terms of the publicity of procedure, the subject is virtually limited to the oral pleading procedures. They also accept indirect publicity on a limited basis. The public access to court records is not guaranteed under their constitution, but the Japanese Civil Procedure Act allows anyone to request access to court records, including the ones of ongoing cases. In the case of criminal court records, only the records of concluded cases are allowed public access, albeit wide exceptions.

In case of Germany, there is no explicit provision on the principle of open trial in the Basic Law(Grundgesetz), but the principle is considered to be constitutionally guaranteed in conjunction with the principles of democratic state and rule of law. There is a wide range

of exceptions regarding the publicity of procedures, and indirect publicity is also prohibited as a matter of principle. Public access to court records are also principally prohibited. The decisions are widely publicized nevertheless on the condition of anonymization.

Although there is no explicit regulation on the principle of open trial in France, it is understood for it to have constitutional value. Open trial is divided into public hearings and public access to decisions, and court records, except for decisions, are not open to the public. Regarding the publicity of procedures, indirect publicity is prohibited in principle, but broadcasting permission has recently been made available for reasons of public interests.

In the UK, the open justice principle has the status of unwritten constitution. Exceptions to public hearing are recognized under the courts' inherent powers, common law, and statutes. In terms of media reporting, the principle of strict liability is recognized, and automatic and discretionary reporting restrictions are recognized as statutory exceptions. indirect publicity is prohibited in principle, but tends to expand its scope in recent years. Courts have inherent powers with respect to public access to records, and in civil cases, case statements, judgments, and witness statements are generally given access, but access to other documents must be authorized by the court through balancing of the related interests. In criminal cases, the judiciary entered into agreement with related organizations to provide court lists and registry information to the media.

In the United States, trials are regarded as public events, and the principle of public trial is dealt with in terms of freedom of expression in Amendment I and the defendant's right to a public trial in Amendment VI. When the First Amendment is applied, the presumption of openness is recognized, and restrictions on openness are justified only when there is a compelling interest to do so and the restriction is narrowly tailored to that interest. Deciding whether to allow public access to court records, the courts take either an approach in conjunction with the related procedure or an approach to independently decide it. With the advent of the information age, court records are open to the public online through public access system which is linked with electronic filing system. And recognizing new risks to privacy protection, federal procedure rules were made to provide grounds for restriction to public access.

In the case of the International Criminal Court, it is characteristic that the Registry conducts indirect publicity on its own, and that exceptions are provided to protect victims and witnesses, and various measures are used to protect the identity of witnesses.

Under the environment of information society, the merits and demerits of the open justice principle emerges distinctively, and it is a challenge facing major countries to properly consider these ambivalence and implement the open justice principle. The positive aspects are promoting public participation in trials, helping to discover substantive truth, contributing to the democratic process through informed discussions, ensuring fairness of trials through public oversight and trust in the judiciary, contributing to the formation of consistent and fair precedents in similar cases, contributing to the expansion of rule of law by increasing the public's understanding of the law, and the so-called "therapeutic value".

Negative aspects include concerns about infringement of personal information, privacy, trade secrets and other sensitive information, risk of infringement on national security, public safety and order, good morals, etc.; and potential harm to be afflicted on the honor, personality and the safety of those involved in the proceedings.

Based on the lessons learned from each country's regulations and discussions on the principle of open justice, this report proposes a possible revision to the Constitution or Court Organization Act so as to reflect the harmonization of the norms between the public interests and those of non-publicity. Acknowledging the court's leading role as a manager of trial information, it suggests the need to recognize the court's wide discretion in determining the restriction of openness, activate indirect publicity led by the court, and promote public affairs for the media and the public.

Furthermore, as a measure to improve the discipline on the method of open trial, it is proposed to provide an explicit basis for the indirect publicity of hearings by stipulating in the Supreme Court Rules; prepare legal grounds for Internet publicity of the remote pretrial proceedings, and set out practice direction for internet broadcasting method, establish provisions for mutatis mutandis regarding the duty to prohibit improper use of criminal judgment information; integrate anonymization methods; permit copying or duplicating as a method of access to civil case records; expand applicants for restrictions on access to civil case records; replace the requirement of consent of the parties concerned with that of hearing; and amend various definition clauses.

In addition, in order to give incentives for promoting openness, this report proposes excluding the courts from the application of the Official Information Disclosure Act and the Personal Information Protection Act to avoid confusion arising from the duplicative application of related laws and interpretation theory limiting the liability for anonymization processing; legislative proposals for the establishment of public access system of electronic records that is linked to the electronic filing system, and preceding tasks to be resolved for the establishment.

On the other hand, with an aim to suppress the side effects of openness, this report proposes measures to establish a basis for non-publicity of family court proceedings, measures to manage court-control in indirect publicity, measures to impose civil fines on improper use to secure accountability in the use of court information, measures to provide the grounds for ensuring accountability when using the online access to court judgments. Possible solutions are also suggested for currently pending issues related to the suppression of side effects such as matters to be aware of when allowing access to the whole court records of non-conclusive cases, and issues of charging or exempting fees on the public access to judgments, and contentions arising from allowing public access to the criminal judgments of unconcluded cases.

II Civil Law

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1

Research on the Improvement of the Efficient Discovery Procedure (2015)

Jung Hwan KIM
Professional Researcher

To achieve justness of judicial proceedings and credibility of trial results, certain facts as an object of legal application must be determined through a valid and appropriate procedure. However, recent aspects of legal actions these days show that evidence is concentrated on the part of the State, local governments, medical institutions, or corporations, especially in an administrative litigation, pollution/environmental lawsuit, medical malpractice suit, product liability action, and corporate litigation. In these legal actions, therefore, an adverse party who is usually a citizen, consumer, or patient has difficulty obtaining the evidence of facts to prove. If such phenomenon of 'maldistribution of evidence' is neglected, a party of citizen, consumer, or patient is not able to prove the facts sufficiently, unless their adverse party actively submits important evidence, which is unlikely to happen for the party is not expected to provide its unfavorable evidence. This situation leads to a non liquet and the party who has not proved satisfactorily is likely to lose the case according to the burden of proof. For this situation considerably damages substantive equality among the parties in a lawsuit, such inequality should be rectified in order to realize just and fair judicial proceedings. Thus, establishing and operating an appropriate system is essential to cope with the phenomenon of 'maldistribution of evidence' and to develop effective discovery practice.

This research report suggests ways to overcome the maldistribution of evidence and to improve our current system of discovery in a more effective way. The research is based on three parts. First, the research examines current discovery under the Civil Procedure Act, focusing on orders for the production of documents and the preservation of evidence. Furthermore, the research conducts a comparative analysis of the systems for effective discovery in several countries, including discovery procedures in the United States, the independent evidentiary proceedings in Germany, and the inquiry to opponent in Japan. Finally, the research devises various ways to improve our existing discovery in Korea, focusing on the revision of current provision.

2

A Research on Judge-run Arbitration in the U.K., and the U.S., and the Possibility of Introducing Judge-Arbitrator (2015)

Jae-Seok RHEE
Senior Judge Researcher

With regard to the sitting judge-run arbitration, common law countries take different positions. In England and Wales, Commercial Court judges and Technology & Constuction Court(TCC) judges may act as arbitrators based on Section 93 of the Arbitration Act 1996. In Scotland, Section 25 of the Arbitration (Scotland) Act 2010 has allowed judge-arbitrators to deal with cases involving commercial disputes. On the other hand, Delaware Court of Chancery Arbitration(based on 10 Del. Code § 349, Court of Chancery Rules 96-98) was the only case in the United States and the Court found that the Delaware's Arbitration program violated First Amendment Right of Public Access in Delaware Coalition for Open Government v. Strine. Delaware state introduced new chancery arbitration process(Delaware Rapid Arbitration Act; DRAA) not permitting judge-arbitrator any more.

Privacy and confidentiality in judge-run arbitration may be controversial issues in terms of constitution, civil procedure rule and arbitration law. The implementation conditions of the new system have not been met in Korea. The introduction of judge-run arbitration is difficult at this stage.

Court should have a friendly attitude towards arbitration and develop a series of ADR relating to arbitration. More retired judges are expected to act as arbitrators in the near future. Designating arbitration judges and making a specialist arbitration list in the court are desirable steps to meet the needs of businesses and lawyers.

This research also suggests the introduction of court-annexed arbitrations such as (i) an 'arbitration program' where standing mediators in court's mediation centers around the nation act as arbitrators and (ii) a 'med-arb program(linkage of mediation and arbitration)' where standing mediators try to settle the disputes through mediation phase and arbitration phase. The new arbitration program can heighten the parties' satisfaction with the decision-maker's expertise and fairness, whereas it can lessen the burden of expenses. Support measures such as amendment of the legislation, additional appointment of standing mediators, education and training, maintenance of facilities are required for the realization of the proposed arbitration program.

3

Research on Improvement Plans of the Appraisal System and the Expert Commissioner System (2016)

Sung-Soo KANG
Senior Judge Researcher

The development of science and technology, and the diverse values make modern society become increasingly specialized and complex, and thus the contents of the legal actions change accordingly. Judges who lack expertise in a specific area need experts' help in order to handle the case properly. So the appraisal system has been adopted in Korea. The expert commissioner system was introduced in 2007 as a supplementary means to reflect the knowledge of experts in the trial proceedings.

In the appraisal system, the result of appraisal that the appraiser appointed by the court makes about a case with his expertise, can become an independent evidence. The result of appraisal which reflects expertise is very important because it has a decisive effect on the outcome of litigation. An expert commissioner shall make an explanation or offer an opinion which cannot become an evidence but may play an important role in necessary expertise in litigation as the assistant of a judge.

Many problems including the propriety of both an appointed appraiser, the result of appraisal, and the adequacy of appraisal cost on such important appraisal system have been pointed out. The seriousness of these problems gets bigger despite of many efforts by courts. The problem that the frequency of use is too low has been pointed out on the expert commissioner system.

In order to reflect expertise in litigation, the United States has adopted the expert witness system, and Germany, Japan as well as France have adopted the appraisal system like that of Korea. These nations operate them properly according to their systems and environments. Germany, Japan and France have been equipped with a close cooperation system with expert groups and have carried out considerable achievements through various measures in the appraisal system accordingly.

This research suggests improvement plans in view of both system and operation of the appraisal system. Some of them including the introduction of the 'Expert Examiner System' suggested by the 'Committee on Trial Reform' have been already proposed. Several plans are suggested in order to boost the expert commissioner system as well.

This research emphasizes the most that a firm cooperative relationship between the judiciary and expert groups must be made in order to operate improvement plans this research suggests. For this, continuous and systematic efforts should be preceded.

4

Research on the Development Direction of Korean Alternative Dispute Resolution (2016)

Seung tae HWANG
Judge Researcher

There is increasing interest in alternative dispute resolution throughout the world. Alternative dispute resolution(ADR) has a significant meaning in the sense that it resolves disputes rapidly, inexpensively, efficiently and creatively, respects the will and position of the parties, keeps the amicable relationships between the parties, and pursues the substantial and final resolution of disputes. If ADR is widely used, the number of litigation cases goes down and faithful trials become possible, which will ultimately enhance the diversity and quality of the dispute resolution process and contribute to the rational allocation of judicial resources. However, even if there are many benefits of ADR, the inquiry and review of its various aspects, as well as the steady evaluation and improvement, are needed in order to institutionalize and activate ADR. Especially there have been many requests for the establishment of ADR in relation to litigation, the traditional method of dispute resolution.

This research looks into the development direction of desirable ADR in Korea, reflecting its importance and necessity.

First, this research reviews the various ADR methods that have been developed in the United States as well as the evolvement and current status of ADR in major countries such as the United States, Germany, the United Kingdom(England, Wales), France, Japan, and Taiwan, to understand the identified characteristics and implications of ADR in each country.

Next, this research examines the enactment and revision history of the Judicial Mediation of Civil Disputes Act of Korea and its contents; the various mediation methods attempted in courts; and the current status of administrative and private ADR. Also, the overall performance of court-annexed mediation is discussed.

Through the discussion above, this research seeks to map the development direction of Korean ADR in a material way. It suggests the activation of judicial mediation, the separation of litigation and mediation, the promotion of ADR outside the court, the provision of an efficient and reliable mediation process, and the orientation of mediation to respect each party involved, as the principal development direction. Furthermore, it discusses ways to improve the judicial mediation petition, mediation before litigation, mediation referral, the legalization of the Mediation Center, the diversification of the dispute resolution method, new mediation methods such as responsibility mediation and court-annexed mediation, mediation by the court in charge of a given case, records of mediation proceedings, the

effects of mediation, decisions made in lieu of mediation, the examination of evidence during mediation proceedings, the confidentiality of mediation, the mediation commissioner, the enhancement of parties' attendance, and the budget for mediation.

Finally, this research proposes a revision of the Judicial Mediation of Civil Disputes Act of Korea based on the discussion above, and explains the amendment contents in accordance with the provisions. Its appendix includes the Uniform Mediation Act, the UNCITRAL Model Law on International Commercial Conciliation (2002), the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, the Model Standards of Conduct for Mediators, and the European Code of Conduct for Mediators.

Even if this research is a little attempt to seek desirable ADR, it would contribute to the establishment of a more efficient and reasonable dispute resolution system in Korea.

5

Research on the Improvement of Reporting Related to Personal Property Public Notice System and Personal Property Security System (2016)

Jung Hwan KIM
Professional Researcher

With the purpose of diversifying financing means for enterprises and improving financing convenience for medium or small-scaled businesses or individual proprietor, the Act on Security over Moveable Property, Claims, Etc. was passed on 2010. 6. 10. and has been in effect since 2012. 6. 11. Nevertheless, Asset Based Lending(ABL) has shown low utilization rate contrary to the initial expectation, and various issues have been pointed out as the underlying causes.

This study aims to investigate several issues and their causes within the current ABL and to suggest an alternative in an attempt to galvanize the impact of ABL so that it would serve its original purpose.

First, this study examines security systems in USA, Japan, UNCITRAL, and EBRD via comparative study methods. Second, this study investigates legalities and the status quo of ABL in South Korea, analyzes causative factors underneath the low utilitzation rate of ABL, and identifies issues within ABL.

Third, based on this analysis, this study will discuss measures to improve ABL, and the last section explores information technology based collateral monitoring methods, which shows promising applicability to collateral monitoring, notice of security over movable property, and database construction.

6

Research on the Witness Examination Procedure and Interrogation Methods (2016)

Joo-Seok KIM
Judge Researcher

A court shall determine, by its free conviction, whether or not an allegation of facts is true, taking account of the whole purport of pleadings and the results of examination of evidence, on the basis of the ideology of social justice and equity in accordance with the principles of logic and experience(Article 202 of the Civil Procedure Code). Accordingly, whether to take the evidence presented in a lawsuit in order to find the truth is left to trial judges, and it cannot be said that there is any probative superiority depending on the type of evidence, be it documentary evidence or witness examination. Nevertheless, practically, it is undeniable that testimony has been considered as inferior evidence compared to documentary evidence in Korea. In addition, the propriety of the administration of proceedings and sua sponte examination have been deemed as playing subsidiary role at best under the adversarial cross examination system. Recently, a more cautious approach is being taken towards witness examination due to the implementation of mandatory recording of court hearings.

From the perspective of a judge as a fact-finder, however, witness examination is an important means for forming conviction on the substance of the case when objective evidence such as documentary evidence is insufficient. It can also be the means to verify the conviction already formed at the final stage of evidence examination. There are plenty of cases where the outcome of the litigation depends on the credibility of testimonies. Witness examination can be a useful tool for truth-finding. It can also enhance the level of public confidence in trials just by its smooth execution. The recent implementation of mandatory recording could give us an opportunity to increase the value of witness examination.

Generally, there are two methods of witness examination: the Continental method that allows judges to lead the witness examination ex officio and the Anglo-American method that gives parties the power to lead it. In general, the Anglo-American approach may carry the risk of misleading witnesses or making them give biased testimony, but it can elicit more detailed testimony by letting the parties or attorneys who are already familiar with the case lead the examination and thereby allow fact-finders such as the jury or the bench to assess the testimony from a relatively objective stance. In contrast, the Continental approach has the advantage of reducing the risk of false testimony by making the witness recognize himself as ‘a witness of the court’ rather than ‘a witness of the party’, but it has the disadvantage of making a cool-headed evaluation of the testimony more difficult. Korea is generally classified as a Continental law country. In terms of witness examination,

however, we adopted the principle of cross-examination which is associated with the Anglo-American tradition. Yet, on the other hand, our system also adds some ex officio features such as allowing judges to intervene at any time during the parties' interrogation. Therefore, the law and practice of other countries on witness examination can serve as a reference for understanding and utilizing the witness examination methods provided for in our legislation. Based on the understanding of the respective advantages and disadvantages of the cross-examination and the ex officio judicial examination, both methods need to be used flexibly depending on the nature of the case and witnesses.

Judges who preside over witness examination and evaluate the testimony of witnesses can also refer to psychology and social science research. Research studies on human memory and behavior suggest that a witness's statement can be vulnerable to many external influences such as interrogation methods, cognitive errors and biases. Also various interrogation techniques are devised for reducing the distortion of such statements caused by external influences. It is certain that these research studies will be helpful in improving our witness examination practices.

This study is mainly focused on providing information to judges so as to help them prepare and preside over witness examination effectively in civil actions. For this purpose, I first summarize the existing laws and practices, and introduce the discussions in major foreign countries such as the U.S., Germany, France, and Japan surrounding the interpretation and application of their laws, and the relevant social science research studies in terms of witness examination. Afterwards, using these discussions as reference along with the various kinds of know-how traditionally mentioned in practice, I seek to gather and organize the ideas which may benefit judges in presiding over and directly carrying out witness examination under the mandatory recording system.

Hopefully this research will help promote further discussions about assessing the current status of the witness examination procedure and interrogation methods in Korea and seeking reasonable measures of their improvement.

7

Research on Improvement Measures for Small Claims Procedure in Korea (2016)

Hyun duk PYO
Judge Researcher

Since the Trial of Small Claims Act was enacted in 1973, which aimed to deal with civil disputes promptly involving relatively small amounts of money through simple procedures, small claims cases have become the largest portion of civil cases brought to court. Because small claims cases generally address legal issues and problems faced by ordinary citizens, many people's overall impression of and trust in the judiciary are formed by the small claims procedure.

Acknowledging the importance of small claims procedure, this research identifies problems in Korea's current small claims system and examines whether or not the procedure established by the Trial of Small Claims Act has achieved its legislative intent and the parties have been satisfied with the procedure. This research ultimately aims to offer suggestions for an improved system of small claims that could better meet the goal of enhancing public trust and confidence in the litigation process.

In order to provide recommendations for improvement, this research conducts a comparative legal analysis of small claims systems among different countries including the United States, the United Kingdom(England and Wales), Canada, France, Germany, Japan, and China. This analysis may shed light on how Korea could improve its own small claims procedure.

This research also identifies the current state of small claims procedure in Korea based on a review of Korea's annual judiciary reports and actual attendance at small claims trials. In addition, this research analyzes the results of surveys of litigants in small claims lawsuits, their representatives, and judges who hear small claims cases. This research reflects their thoughts on the current small claims procedure and their suggestions for improvement.

Based on the above analysis, this research offers recommendations for improvement of the small claims system and the respective processes at each stage of the trial: commencement of proceedings, hearing, decision making and post judgment. Furthermore, this research offers a long-term improvement plan.

While the small claims procedure favors judicial economy and efficiency, the court must not overlook the importance of fairness in trials and the rights of litigants. Considering that the Supreme Court of Korea has also been pursuing the Trial Reform Project to ensure fairness in court, striking a balance between effectiveness and fairness cannot be overemphasized. The court should also pay more attention to enhancing public access to

justice, thereby enabling people to more effectively deal with issues arising in small claims.

Hopefully, this research would contribute to the growing discussion on the small claims procedure in Korea, and thereby lead to meaningful improvements that effectively help every citizen enjoy the right to a fair and speedy trial in small claims lawsuits.

8

The Status Quo and Future Directions of Public Interest Litigation Policy (2016)

Tae-Ho KIM/ Junghwan KIM
Professional Researcher

There has been increasing interest in recent years in public interest litigation, leading to the implementation of various laws to facilitate its utilization in Korea. However, public interest litigation has, in fact, been vastly underutilized despite developments in these domestic laws and policies aimed at promoting it.

This research is intended to address the underutilization of public interest litigation in Korea. In particular, this research examines the current institutionalization of public interest litigation, discusses its various theories, and offers suggestions for promoting its utilization. After a brief introduction, this report will examine these issues in four subsequent chapters. Chapter Two identifies the concept of public interest and public interest litigation, and the function of public interest litigation. Chapter Three conducts a comparative legal analysis to examine various definitions of public interest litigation and policies aimed at promoting it, and its utilization and features among different countries. Chapter Four introduces laws and policies implemented to promote public interest litigation in Korea and explores exemplary cases to illustrate its utilization. Chapter Five concludes by addressing the problems concerning Korea's public interest litigation system and by offering suggestions to improve the public interest litigation system.

9

Basic Research on the Status and Improvement Plans for Examining Evidence of Electronically Stored Information (2016)

Sungsoo KANG
Senior Judge Researcher

As a result of the advancement of scientific technology and the universality of the internet, the public's use of electronically stored information continues to rise. Compared to tangible materials, it takes much less time and money to manage electronically stored information. Electronically stored information is becoming ever more popular and is filed more often as evidence in litigation.

Electronically stored information exhibits characteristics such as media independence, vastness and flexibility, so it needs to be treated differently than tangible evidence. In Korea, statutory law on electronically stored information in the field of evidence examination methods is rather simple, and practice that has been established based on such law does not properly reflect the characteristics of electronically stored information. This is also true in the field of evidence collection. The current order system for the production of documents is lacking in consideration of the characteristics of electronically stored information. The same can also be said of the improvement plans with regard to the order system for the production of documents and the prior evidence examination procedure before trial proposed by the 'Committee of Trial Reform'.

In the United States, evidence examination of electronically stored information is the subject of extensive research. Given the widespread use of discovery in U.S. courts the discussion of electronically stored information tends to center around discovery. Relative to that of the United States, discussions on the evidence examination of electronically stored information in the UK, Germany and Japan have been quite insufficient. Although it is difficult to apply the results of the research on electronically stored information in the United States to Korea which has a different system, the study may be helpful in raising awareness and recognizing basic principles in respect of electronically stored information.

By analyzing the problems of evidence examination of electronically stored information in Korea and studying relevant U.S. literature, this research identifies the basic material necessary for proposing improvement plans on the matter. Also, the desirable direction in which the current law should be revised, as well as ways to appropriately reflect the essential characteristics of electronically stored information on methods of evidence examination and collection, are thoroughly addressed.

Hopefully this research will serve as a basis for comprehending the issues and solving the problems related to the evidence examination of electronically stored information.

10

The French Law of Evidence in Civil Actions (2017)

Moonhee AN
Professional Researcher

The French law of evidence in civil proceedings is governed by both the Code of Civil Procedure and the Civil Code. The former provides for the procedural law of evidence where as the latter sets down provisions on different forms of evidence with respect to specific legal acts. The particular and unique nature of the dualistic structure of French evidence law reflects the French approach towards the law of evidence as a field of law that lies at the crossroads between procedural and substantive law. Similar to Korean civil law, one feature of the French Civil Code is its recognition of informalism in contract formation. However it differs in that with regard to legal acts requiring intent, formalism is reduced by applying the principle of priority of written evidence, thereby recognizing formalism in respect of evidence.

Similar to the provisions on the law of obligations, the better part of evidence law in the Napoleonic Code of 1804 was left intact until it was completely revised by ordinance No. 2016-131 on February 10, 2016. Although as a result of the sweeping revision the law of evidence in the Civil Code has been significantly modernized and streamlined, the principle of priority of written evidence that was introduced by the Edict of Moulins (1566) has been left untouched, along with such original forms of evidence as written evidence, testimony, admission and oath that were all recognized under the law of evidence before the revision. The characteristics of French evidence law can also be identified in disputes involving evidence in the Civil Code where the provisions of the Code of Civil Procedure on forgery lawsuits, expert appraisal and opinion evidence are applied. The fact that all but one provision of the Civil Code on testimony was abolished for the sake of harmonization with the Code of Civil Procedure attests to such characteristics of the French law. Ultimately, French evidence law can be defined as a composite outcome of historical developments, French particularities, practical need and other factors.

11

Research on Demanding Procedure through Service by Public Notice (2017)

Hosung CHO / Juwhan KIM
Research officer / Director General for Research

In the past, since Demanding Procedure was no longer available when a creditor could not obtain a debtor's address, the creditor was obliged to file a lawsuit or otherwise the court ex officio instituted civil proceedings. The past practice was both costly and time consuming by making the creditor go through dual procedures — Demanding Procedure and litigation procedure — and futhermore burdended the justice department of civil cases on the merit.

To improve this inefficient judicial system, Demanding Procedure through Service of Public Notice(DPSP) was enforced on December 1, 2014. When payment order is not serviced to debtor because the debtor's address is unknown, it is possible to be serviced by public notice and thereafter that payment order becomes final and conclusive after a certain period of time.

Demanding Procedure is an exception of litigation procedure in solving cases, and the service by public notice for payment order is an exception of Demanding Procedure. For the double exceptional characteristic of the DPSP, it is necessary to examine the operation of DPSP in practice.

After two years from enforcement of DPSP, this research aims to give an understanding of the system of DPSP and identify the outcome of enforcement of DPSP with suggestions for improvement.

To be specific, this research looks into the legislative process and the practical operation of DPSP and analyzes the number of cases, current status of creditor using DPSP, time required, etc. derived from statistics sources. Moreover, by means of comparative legal analysis, this research draws suggestions by studying the overseas jurisdictions including Germany, Japan and Austria.

Hopefully, this research would contribute to the growing discussion on DPSP in Korea, and thereby lead to various improvements.

12

Dismissal in Civil Procedure of the United States (2017)

Giu Sung OH
Judge Researcher

The U.S. federal and state civil procedures are divided into two stages: pretrial and trial. At the pretrial stage, the plaintiffs and the defendants prepare for trial by means of pleading, discovery and other ancillary proceedings. Most cases are disposed of by settlement or dismissed without a trial. If a case is not settled, it will proceed to a trial. At the trial stage, the jury will determine what the facts of the case are unless the parties waive their right to a jury trial. At the conclusion of the trial the court will deliver a judgment to the parties. Considering the structure and process of civil litigation, it is important to screen out in the beginning of the process the cases that the court does not need to adjudicate on and to concentrate judicial resources on the cases that need thorough reviewing on the merits. Therefore motions to dismiss and the dismissal of actions or claims in the early stages of litigation is important in the U.S. civil procedure.

In the U.S. federal and state civil procedures, if a plaintiff fails to prosecute or comply with codes and rules of civil procedure or a court order, a defendant may move to dismiss the action or any claim against it and a court may sua sponte dismiss such action or claim. In some states the court may also dismiss a complaint as a frivolous lawsuit. The court has the inherent power to impose the sanction of dismissal in a proper case or to dismiss a case for litigant misconduct. In addition, a court may dismiss a complaint when a plaintiff fails to state a claim upon which relief can be granted. Actually in motion practice, motions to dismiss for failure to state a claim are not rare, and courts often grant such motions. Such dismissals essentially amount to adjudication on the merits in the early stages of the civil litigation procedure without the fact finding and the examination of evidence. In comparison to the civil procedure in Korea where courts can dismiss a complaint only for limited procedural defects, U.S. federal and state courts enjoy a greater degree of authority and discretion in dismissing cases on various grounds.

In the U.S. some states have statues or codes that provide for the right to dismiss a case as a frivolous lawsuit. Moreover, several states have enacted vexatious litigant acts or vexatious litigation law which prohibit vexatious litigants from filing lawsuits without the permission of the court. Many states have also legislated against so-called “Strategic Lawsuit Against Public Participation, SLAPP”, in which state defendants can file an early motion to dismiss for SLAPP. This shows how states utilize dismissals for their respective needs.

Dismissals in the United States have developed by reflecting the characteristics and the practices of the U.S. federal and state civil litigation procedures. Nevertheless the speedy

and economical resolution of claims by means of the efficient allocation of limited judicial resources provides important implications for Korean civil procedure. By referring to the institution of dismissals in U.S. civil procedure, it may be possible to improve certain aspects of the Korean civil litigation procedure such as specifying the grounds for dismissal, investing the court with more authority for sanctions against contempt of court and legislating against vexatious litigation or frivolous lawsuits.

Hopefully, this research will contribute to the growing discussion about securing a just, speedy and inexpensive outcome for civil litigation in Korea.

13

The Role of Courts on Development and Growth of Arbitration (2017)

Junghwan KIM / Junsun PARK
Professional Researcher

Arbitration is a method of dispute resolution in which the parties submit a dispute to an impartial person who has been selected by the parties for a final and binding decision. Arbitration can provide a prompt and efficient method for resolving disputes without the expense, delays, or complications that are inherent in litigation. Commercial arbitration continues its global growth – with very significant increases in the number of disputes initiated, as well as in the monetary sums in dispute. This strong trend can be partially attributed to developing and rapidly industrializing economies, and the consequent increase in business opportunities and ensuing disputes. Although arbitration is a private method of dispute resolution, the importance of judicial support for the development and growth of arbitration on both the domestic and international level cannot be underestimated. The judiciary must be actively involved and demonstrate a willingness to support arbitration, facilitating its processes and enforcing its results. In this research paper, the author discusses the key features of arbitration, theories behind judicial intervention in arbitration and the role of courts on the major concepts of arbitration.

14

The Research on the Online Dispute Resolution (ODR) (2018)

Inkook KAY
Professional Researcher

Online Dispute Resolution("ODR") stands for the application of Alternative Dispute Resolution("ADR") practices and theories with the deployment of online communication channels between the parties. While ADR emerges in order to complement the formal judicial process, ODR further enhances the dispute resolution scheme by improving the methods of communication.

Even considering that ODR reduces costs and brings an efficiency and convenience to the resolution through replacing previous physical face-to-face meeting with non-face-to-face online communication, it is still required to secure impartiality, credibility, and legitimacy. This paper summarizes the requisites of ODR framework and introduces a basic planning method of the system.

Demand for ODR has been increasing in the field of electronic commerce, especially international one. In this regard, the formation process of rules or guidelines at the international level that has been discussed by OECD or UNCITRAL is briefly introduced, and the status quo of ODR in the United States, the European Union, the Netherlands, Japan and China is examined.

This paper sets two directions — legal technology and access to justice — on how the judiciary could accept the idea of ODR, and then figures out the concept of the multi-door courthouse model and a practice plan for acceptance of the idea of ODR in the electronic justice system, especially in connection with pro se litigation and ODR.

15

The Method of Judgment Writing in Civil Cases of the Final Appeal Court in France, Germany, Japan (2018)

Sang-ick HA
Judge Researcher

The final written judgment rendered by the highest court is not only of importance to the litigants as an ultimate conclusion of the case, but of symbolic significance that reflects the tradition, history and current state of the judicial system, the status and authority of the highest court, and legal consciousness and confidence in the judiciary of the public. This paper looks into the method of judgment writing in civil cases of Cour de Cassation(France), Bundesgerichtshof(Germany) and Supreme Court of Japan reviewing the actual written judgments thereof, and thereby draws concrete and practical suggestions to improve the method of judgment writing of the Supreme Court of Korea as well as the Korean final appeal system.

The practice of judgment writing of the highest court in each country is closely related to the factors such as the status of the highest court in the judicial system, the adoption and content of restrictions on final appeals, the size and personnel composition of the judicial panel in the highest court, and the size and role of trial assistants. Thus, those factors are first examined within the scope of the subject of this paper. Next, this paper reviews the actual written judgments in civil cases of respective highest courts and identifies the unique characteristics of the judgments and the reasons why such characteristics have been formed. In addition, this paper examines the correlation between the workload of the judges in the highest court and the method of judgment writing by going through the caseload statistics of the highest court.

In so doing, this paper figures out that the highest courts of France, Germany and Japan each retains special characteristics which are clearly distinguished from those of other countries, and those characteristics are deeply correlated with the judicial system, the final appeal system, the judicial tradition, and the training of legal professionals in each country. Based on the examination, in terms of practical measures to improve the method of judgment writing of the Supreme Court of Korea, this paper makes a number of practical suggestions, such as review of grounds for the final appeal and presentation of opinion thereto by the court of appeal, continuance of trial on an exceptional basis, and explanation of reasons for discontinuance of the trial provided on exceptional grounds.

16

Research on Complex Litigation in the United States: An Analysis of Multidistrict Litigation (2018)

Jaewoo LEE / Jiyong JANG
Professional Researcher / Judge Researcher

'Complex Litigation' is a category of cases requiring specialized judicial management so as to make the most of limited resources in providing compensation to victims. To qualify as complex litigation, a case should involve multiple parties, large amounts of money, complex legal issues, procedural complexity, etc. Class Action is a well-known example of complex litigation, however with the statutory requirements for class certification becoming increasingly more difficult, "Multidistrict Litigation(MDL)" is getting more attention as a way to resolve complex cases.

28 U.S.C. § 1407 provides for a mechanism to transfer civil actions in different federal districts to a single federal district court for centralized pretrial proceedings once a transfer order is made by the Judicial Panel on Multidistrict Litigation(JPML). At the conclusion of pretrial proceedings, any unresolved actions are remanded to the transferor district for trial or further proceedings. However, most cases are settled in the transferee court, and results of Bellwether(representative) trials are also used to address the remaining cases. In MDL transferee judges, assisted by Magistrate Judges and Special Masters, enjoy wide discretion in case management and discovery procedure. MDL enables coherent dispute resolution, active and efficient case management, and by guaranteeing 'rough justice' for many instead of 'complete justice' for a few it is fitting to the complex and rapidly changing modern world.

In Korea, there was a number of complex litigation cases such as the Hebei Spirit case, humidifier disinfection case, personal data breach case, as a result of which adopting a collective dispute resolution system is now under discussion. Centralizing jurisdiction through active transfer, classification and consolidation, distributing compensation funds by way of active court involvement, holding bellwether trials, settling disputes by alternative dispute resolution(ADR) may be considered. In addition, we can improve our litigation system by adopting a discovery system, ensuring a continuous workflow by presiding judges, and getting assistance from special masters.

17

Study on the Suitable Operation of the Punitive Damages System (2019)

Junghwan KIM
Professional Researcher

Recently, there has been much discussion on punitive damages, and particularly, much debate over whether or not punitive damages should be adopted into Korean law. Since the adoption of punitive damages in the 2011 Fair Transactions in Subcontracting Act—which stipulates that punitive damages must not exceed more than three times the damages incurred—many other laws and regulations have been adopting punitive damages. Numerous government departments have also announced plans to further adopt punitive damages, and various bills relating thereto have been submitted to the National Assembly. However, there is still much debate as to whether the adoption of punitive damages is appropriate, and there is fundamental criticism regarding the validity of the systems already adopted.

While theoretical discussion on the problems of the punitive damages system itself is obviously important, given the increasing adoption of punitive damages in current and ongoing legislation, the question of how systems that have already been adopted should be operated is of equal significance. The purpose of this report, which focuses on the suitable operation of the punitive damages system, is to provide a basis for discussion regarding the appropriate adoption and operation of punitive damages to effectively achieve their intended goal.

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Research on the Improvement of the Administrative ADR System in the Republic of Korea (2019)

Bongcheol KIM
Professional Researcher

A growing number of complex disputes requiring specific expertise on diverse subject matters in a modern society are, in many situations, making traditional lawsuits impractical. In response to this, administrative ADR—a system of alternative dispute resolution methods that increase the autonomy of involved parties—has been growing in use in the Republic of Korea, as well as in many other countries around the world, including countries with advanced litigation systems.

The administrative ADR system involves relevant administrative agencies in resolving disputes between parties, either directly or indirectly through their affiliated organizations. This system serves an important function of reducing social costs arising from disputes because it facilitates the resolution of disputes in different social sectors with the involvement of various experts. This system can also ultimately contribute to social stability and integration.

From a judicial policy making perspective, the administrative ADR system reduces the workload burden of the court and thereby creates an environment in which individual judges could concentrate more on individual cases, which is closely related to an appropriate (and effective) allocation of judicial resources. Acknowledging the contributive effect of the administrative ADR system on judicial policy making, this research identifies the current state and problems of the administrative ADR system in Korea and offers recommendations for improvement. In addition, this research provides suggestions for promoting use of administrative ADR systems.

With this purpose in mind, this research begins by providing an overview of the administrative ADR system and then conducts a comparative legal analysis of different countries, including the United States, Germany, France and Japan—all of which employ different ADR systems. The comparative research is conducted to examine how these countries have designed and developed their ADR systems (including administrative ADR systems), what special features their administrative ADR systems have, and how their systems could shed light on the improvement of the Korean system. This research then reviews specific laws and regulations of Korea that govern different kinds of mediation committees that are responsible for ADR administrations and examines the operating status of some selected mediation committees that could be deemed as representative committees, in order to identify problems of the administrative ADR systems in Korea.

Based on this analysis, this research offers suggestions for improving and promoting the administrative ADR system in Korea. The suggestions for improvement address issues relating to the independence, neutrality, and expertise of the members of the mediation committee, the autonomy and the parties' rights to make statements in the mediation procedures, the relationship between mediation procedures and litigation procedures, the effect of a concluded mediation, the organization of administrative ADR agencies, the expertise of the secretariat, and the enactment of the Framework Act for Administrative ADR. Additionally, the proposed recommendations for promoting the administrative ADR system deal with issues relating to the promotion of the administrative ADR system, externally linked mediation, access to mediation, the partial introduction of the mediation-prepositive principle, the proactive utilization of a single person mediation panel, and the rationalization of the concluded value of reparation for damage through mediation.

19

The Harmonization of Adversarial and Inquisitorial Justice in Trial Procedure (2019)

Jong Youp LEE
Senior Judge Researcher

The adversarial and inquisitorial models can usually be classified into two meanings, one for the historically institutionalized model developed by Anglo-American and European continents, and the other for the ideologically conceptualized model derived from the standard of the given initiatives between the judge and the parties in the trial. The integral parts of the both models in an ideological sense would be characteristically enumerated as the activeness/passiveness of the judge, the contest model/inquest model in finding the facts, and the input control/ output control in order to ensure the propriety of the trial proceedings. While not essential in the adversarial and inquisitorial models, peripheral elements which have developed in a confrontational manner in both blocs include the jury system, the cross-examination system, the intensified hearings, the principle of pleading by written documents, the allowance of the examination/cross-examination of opposing parties, and the judge's exercise of the right to request elucidation. These essential and peripheral elements of the adversarial and inquisitorial models have an importance in understanding and assessing the trial system in Korea.

Historically, the adversarial and inquisitorial models have influenced one another as they have undergone a process of dialectic convergence which is apparent in Korea's trial system today. The Korean trial system can be viewed as a type of eclectic and hybrid model that is characterized by different features from both the adversarial model and the inquisitorial model, ultimately leading to strike a balance between the two models by allowing a reasonable amount of judicial discretions to be exercised in the individual trial. The principle of 'ascertaining the factual truth,' 'procedural justice', and 'efficiency of litigation' may be seen as the judicial philosophy that consist of the rational basis of this judicial discretion in Korea.

Based on the results of empirical studies on the principle of ascertaining the factual truth, it can hardly be said that one model is obviously superior to the other. However, the results of the studies revealing that the efficiency of fact-finding varies pursuant to the litigation's information structure conditioned whether on the information sharing or not between the parties, have shown that the degrees and details of the judge's intervention shall be differentiated depending on the individual trial's structure and characteristics featuring differently by its information structure. While the adversarial model would have an advantage as a trial system in terms of preventing a confirmation bias in the information processing, such an advantage of the adversarial model could substantially be implemented

through the individual trial management in Korean trial system.

The established empirical studies on procedural fairness have identified the following factors to play an important role in determining the degree to which the parties involved in a trial actually experience the procedural justice: the degree to which the parties feel the process control; whether or not the parties have had sufficient opportunity to voice their positions; and whether or not these voices have been given serious consideration. Contrary to the public's prevailing belief, trial participants place a greater emphasis on the fairness of the trial procedure itself rather than the trial results. This shows that, in order to build people's trust in the judiciary process, it is necessary to make a transition from an 'outcome-centric mode' of thinking, which stresses trials conforming to factual truths, to a 'process-centric mode' of thinking, wherein the process itself is emphasized.

An alternative to harmonize the initiatives imparted each on the judges and the parties in the individual litigation would be considered by emphasizing conversation and debate, which is stressed in the communicative model of trials. In this type of model, activeness is reciprocally transferred between the parties and the judge through conversation and debate, allowing the democratic exchange of initiative during the trial. This perspective on the dialogic theory is expected to provide a new approach for the existing trial system. Thus the exercise of the right to request elucidation, by pointing out information overlooked by other parties, could possibly be reinterpreted as an trial act which empowers the parties to participate in the proceedings upon the accurate information, and further having the communications in the courtroom to be more substantive. The judge's disclosure of the conviction shall also be understood as a prognosis of the fairness to have the parties participate in the judging process, by which the adjudicator could place his/her hypothetics on the verification forum. To effectively and efficiently administer a trial, it is imperative to establish conditions that enable active conversation and debate in the courtroom and to remove elements that impede such conversations/debates, thereby implementing and realizing a dynamic trial in which the judge and all parties involved can actively participate.

However, in some cases, in order to achieve this court environment, it is necessary for the court to intervene. In order to minimize the risk of bias possibly derived from such active intervention, it is crucial that the judge be aware of the potential danger for bias and be called on to assume a strategy (de-biasing strategy) to overcome the same.

The degrees and types of judge's intervention may vary depending on the stage of the trial, from identifying the issues and admitting the evidence and further to the examination of the evidence and pleadings. Judge's intervention may also be stratified on the basis of the trial types or characteristics, such as the modern-type litigation, the self-represented litigation, or the asymmetric litigation. However, throughout the intervention process, the key elements of procedural fairness — that is, the sense of control over the proceedings felt by the parties involved, the voice of each party, and the serious weight given to each voice — must be considered at all times.

20

Study on the Protection of Personal Information in Civil Litigation and Execution Procedures (2020)

Woo Kyung PARK
Professional Researcher

As social sensitivity to privacy protection increases, social interest in matters where personal information may be exposed or leaked through the courts in litigation and execution procedures is also increasing. Accordingly, there is a growing demand for the role of courts in protecting personal information. This study, within the scope of litigation and execution in the ordinary civil cases, aims to identify the routes through which personal information could be exposed or leaked, and further suggest the range of the parties' personal information to be required in documents when preparing civil proceedings and execution procedures. The following three points were examined with a view to exploring and suggesting some avenues on how to limit the scope of the personal information required in civil litigation and execution procedures and thus how to redesign the scope of responsibilities for personal information protection between the parties, the stakeholders, and the courts respectively.

First, we have examined the range of the personal information and the right to informational self-determination, then have identified the personal information required in civil litigation and execution procedures under the relevant rules. The provisions in the enacted law level, such as those in Civil Procedure Act or Civil Execution Act, basically require the litigants' addresses or do not specifically prescribe the necessary information in detail for civil litigation and execution procedures. Whereas, some of the provisions in the lower regulation level or civil procedural standard forms in practice require litigants' social security numbers in addition to their address information.

Second, we have made a preliminary research on the handling of personal information in the courts' practices. While litigants more often than not know each other's personal information, in exceptional cases, such as in a case where a crime victim filed a suit for damages against the offender, litigants would not want his/her address known to the other party, consequently having privacy issues arise. In these exceptional cases, a number of problems would likely arise with regard to not only the documents prepared by litigants, such as complaints or court-deposit application documents, but also the documents provided by courts and delivered to litigants, such as judgments, decisions, and orders. It was also found that personal information of the parties, such as addresses or social security numbers, might be exposed to all other parties in the multi-party litigation, or be leaked while court auction records or deposit documents are inspected and copied by stakeholders.

Third, we have compared and reviewed the privacy protection systems in other countries' civil litigation and execution procedures in a comparative perspective. The

personal information commonly required in civil litigation and execution procedures in the countries under review are litigants' names and addresses. As regards the handling of personal information in courts, each country has specific characteristics showing some differences and disparities among each other. The system in the United States appears to be distinctive, as compared to those in civil law countries in Europe that commonly apply the EU General Data Protection Regulation (GDPR), actively considering the role and responsibilities of the courts on a relatively consistent legal basis.

The courts in the United States tend to minimize the range of personal information collected by courts in the civil proceedings to the name and address of litigants, leaving the responsibility of collecting additional information on the litigants or the execution authority. Especially the creditors have widely recognized right to collect debtor's information. The responsibility to redact filings also rests on the litigants.

Austria and France have specific institutional procedures for non-disclosure of personal identification information, such as litigants' addresses. Austria requires that personal information be submitted in a separate document to protect victims' information in civil proceedings. In Germany, the academics suggested the possible introduction of procedure for non-disclosure of victim's address already adopted in Austria, but it has yet to have institutionalized such system. In France, a procedure for non-disclosure of address is available for victims' filing a complaint with constitution of civil party(la plainte avec constitution de partie civile), allowing him/her to submit an address of a third-party under the third-party's explicit consent.

In the case of Japan, certain information regarding the parties, such as confidential business information or the facts as to the sexual offenses, are protected in the process of inspecting or copying the court records. Efforts are also made to protect personal information in the civil execution procedure: Upon request from a person concerned who had been questioned by an execution officer during the compulsory auction procedure against the immovables, his/her name can be processed in anonymity in the investigation report on the current status of the auction objects. In such auction records that are electronically accessible, pseudonyms are used for the names of debtor, owner, tenant, etc.

On the basis of the above findings, this study suggests the range of the parties' personal information required in documents to be prepared and provided during civil litigation and execution procedures, and the ways to improve the handling of personal information in such procedures as follows: Given the benefit of a party by having the information as to the address of the other party, it is reasonable to state the full address of litigants in the complaints, judgments, etc. And considering the fact that the social security number uniquely identifies a person and damages incurred therefrom would be hard to recover when it is exposed or leaked to other people, it is appropriate not to have social security numbers of litigants recorded at least in the documents provided by courts.

The main point of improving the handling of personal information recorded in the documents prepared by litigants is to adopt following systems in the civil litigation and

execution procedures: a party statement document, filings made under seal, and procedures for non-disclosure of litigants' addresses. The party statement document shall be prepared and submitted separately from the grounds for the claim by every filer in the ordinary civil cases. Party statements contain the name, address, and social security number of the parties and are being submitted at the stage of filing a lawsuit or applying for an order(e.g. an order for payment). A filer, who has redacted personal information from the complaint and has submitted a party statement, can also submit some of the documents under seal without redaction, when it is necessary in the procedure. A party, who wishes to have his/her residential address unknown to the other party in civil litigation and execution procedure and who has a legitimate interest in doing so, may seek the court's permission in order to keep his/her address information confidential. If the judge grants permission to prohibit disclosure of address, the party may keep the information confidential not only in civil litigation procedure but also in civil execution and court deposit procedures.

The essence of how to improve the handling of personal information recorded in the documents prepared by the court is to introduce the party information confirmation process. It is a process that provides a separate document that shows social security numbers of the litigants upon the request of those who need the information for the execution procedure.

Provided that we do not choose to adopt the party information confirmation process, the alternative solution is to have some of the personal information written in the original document be removed from its certified copy, which is to be sent to the defendant. This method may raise the issue of validity of the original copy. The Certified e-Document Authority and the Austrian concept of 'abridged copy'(gekürzte Ausfertigung) might help solve the problem. The Certified e-Document Authority is a third party designated to hold or certify electronic documents for others or to perform related tasks. It is conceivable to have them in charge of certifying registration, delivery, content, and originality of the documents issued by courts. In addition, a new concept of original copy that considers electronic documents needs to be introduced. The concept of abridged copy allows to acknowledge a copy that omits some of the personal information written in the original document as an original document, assuming that substantial contents of the two are identical.

This study has limited the research on the protection of address and social security number of parties in civil litigation and execution procedures. It is hoped that our discussions of protecting personal information be continued in other types of litigation that focuses on a broader spectrum of personal information, leading to a more complete and systematic improvement of privacy protection in trial proceedings.

21

Fact-finding in Mediation Proceedings (2020)

Sungmin JEONG / Kwangkyoon BAEK
Judge Researcher

For mediation to result in a successful settlement, it is essential to verify certain factual matters within the mediation process. However, as mediation is a non-contentious procedure governed by the inquisitorial system, it is distinct from litigation and does not aim to establish facts in the same manner. Therefore, the mediation process should not be transformed into a judicial procedure, and fact-finding within mediation should not be converted into formal evidence-taking.

In Japan, fact-finding and evidence-taking in mediation procedures are permitted under the Japanese Civil Mediation Act, notwithstanding only fact-finding is commonly conducted in practice. Similarly, the amendment of the Korean Civil Mediation Act on February 4th, 2020 contains the evidence-taking in mediation procedure is no longer permissible, leaving fact-finding as the sole means of verifying factual matters. Such fact-finding must not involve coercion or the imposition of obligations without legal grounds.

Acceptable methods of fact-finding in mediation include document review, hearing statements and opinions from parties and third parties, factual investigations by expert mediators (including simplified evaluations), expert opinions, and on-site inspections of land and buildings. Conversely, methods such as court orders for document production or submission, extra-judicial document investigation, formal expert appraisals, orders for submission of financial or tax information, and requests for telecommunication records, all involve coercive measures or legal obligations and thus fall outside the permissible scope of fact-finding in mediation. These measures should instead be pursued through litigation or by filing applications for the preservation of evidence.

Although official inquiry for facts are permitted, their utility is limited due to the absence of legal grounds to compel responses when the respondent is subject to statutory confidentiality obligations. Moreover, the mediation procedures lack a legal basis for handling sensitive personal information.

Accordingly, the judicial guideline titled “Opinions on Various Issues Related to Civil Mediation Procedures” (Jaemin 95-1) should be revised to reflect the amended Civil Mediation Act and Civil Mediation Rules, particularly by removing provisions to evidence-taking. In addition, it is necessary to establish provisions regarding the remuneration for expert mediators providing opinions, pursuant to Article 12 of the Civil Mediation Rules and Article 7(3) of the Regulations on the Administrative Processing of Civil and Family Mediation (Jaemin 2001-8).

22

Study on the International E-service (2021)

Hyo Jung KIM
Professional Researcher

In international litigation, the time length required for the service of judicial documents is ordinarily much longer than that of domestic litigation. So it is necessary to significantly shorten the service period by utilizing international service mechanism using electronic means in order to expedite the litigation. In addition, in the cross-border cases where the defendant's domicile is unknown despite the e-mail address is identifiable, we need to explore some available and affordable service methods to ensure that the lawsuit would proceed smoothly and that the recognition and enforcement of the relevant judgment would not be refused in the subsequent phase by serving the judicial documents through e-mail account.

The international e-service of judicial documents has currently been recognized in (i) 2018 proposal for amending "EU Council Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("EU Service Regulation")", (ii) "European Small Claims Procedure Regulation", (iii) "Universal Postal Convention" as well as common law countries such as the United States, the United Kingdom, Australia and Canada. However, Korea does not explicitly allow international e-service of judicial documents like Japan and Germany. The reason for the difficulty to implement international e-service in the court's practice in Korea is that there exist no explicit regulations on international service using electronic means under the bilateral treaties on judicial assistance concluded by Korea, or the Civil Procedure Act and the Act on International Judicial Mutual Assistance in Civil Matters. And further reason could be found in that Korea made a declaration pursuant to Article 10(a) of the "Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter "HCCH Service Convention")" at the time of its accession.

The purpose of this study is to examine whether international electronic service could be allowed under the current international service system in Korea, and to present a concrete introduction scheme for international e-service of judicial documents in civil and commercial cases. To this end, this paper has reviewed on the availability and appropriateness of introduction of international delivery through e-mail and security e-platform, and has focused on designing its institutional/technical introduction plan and legal introduction plan respectively.

First of all, in reviewing the institutional/technical introduction plan for international service by e-mail, this study has scrutinized the necessity of developing an e-mail service

that maintains security in terms of guaranteeing the right of defense of the person to be served is examined. In this regard, this study has analyzed the online registered mail system, Korea's "#mail" and Germany's "De-Mail", as well as a plan to incorporate PGP (Pretty Good Privacy) into general e-mail.

Based on this research, some implications were drawn that the e-mail system which Korea will develop for international e-service should have the functions as follows: (i) function to encrypt the contents of electronic service and block/dissolute the account when exposed to the risk of hacking by a third party, (ii) function of user identity confirmation, (iii) functions of transmission and reception confirmation, reading confirmation and documentation. Furthermore, this paper has proposed requirements for accreditation of e-mail service providers and also the requirements for equal handling of domestic e-mail service providers and foreign e-mail service providers.

As for institutional/technical introduction methods of international service through the security e-platform, this study has addressed a set of assessments involving (i) a plan to utilize a domestic electronic litigation system and (ii) a plan to develop an international e-service platform jointly with other countries. In case of Korea, it would be desirable to establish an international e-service platform jointly with as many countries as possible, nevertheless it might be difficult to achieve such results in the foreseeable future. Therefore, it is expected to try to establish an international e-service platform among Korea, China and Japan in the first place by making reference to the example of the European e-Justice Portal.

As regards legal methods for the introduction of international e-service, this study has also dealt with the requirements for international e-service and legal measures necessary for the introduction of international e-service.

The followings are suggested as the requirements for international service by e-mail: (i) the person to be served must have explicitly agreed to use a specific e-mail account for the purpose of delivering the judicial document, (ii) the law of the foreign country in which service is conducted does not prohibit service by e-mail, (iii) service shall be performed by an e-mail service provided by an accredited domestic e-mail service provider, (iv) the e-mail account to be served shall be an account provided by an accredited domestic service provider or a foreign e-mail service that is treated equally.

On the other hand, as the requirements for allowing international service through the security e-platform, this study has also suggested that (i) the person to be served must have explicitly agreed to deliver the court documents through the security e-platform, (ii) the law of the foreign country which the service is performed does not ban service through the security e-platform.

The proposed legal measures requisite for international e-service shall include: (i) the stipulation of international e-service under the bilateral treaty and the expansion of the countries signing the bilateral treaty and memorandum of understanding, (ii) the easing of the declaration of objection under the Hague Service Convention, (iii) the amendment of the

Civil Procedure Act, Act on International Judicial Mutual Assistance in Civil Matters, and the Act on the Use, etc. of Electronic Documents in Civil Litigation, etc.

In reviewing the ways how to introduce international e-service, interdisciplinary and integrated research in the field of international civil procedure law and technology would be prerequisite, and furthermore the difference between ex officio and party-initiative service, the equivalence and harmonization with domestic electronic service, and the special nature of international service should be carefully considered and weighed. It is expected for this study to play a momentum and constitute a continuum in the furtherance of more active discussions and research on the introduction of international e-service, aiming at implementing international e-service in practice, and ultimately to ensure the expedition of lawsuits and the reduction of judicial costs.

23

A Study on Neighborhood Dispute Resolution through Community Mediation (2021)

Bongcheol KIM
Professional Researcher

With the increasing number of disputes in various areas in the world today, the number of disputes between neighbors who live in the same community has been on the rise. To resolve these neighborhood disputes, some local governments in Korea have recently partially introduced community mediation as an alternative dispute resolution.

Community mediation resolves disputes by using members of the local community as mediators. It has institutional significance in that it contributes to fundamentally restoring the relationship between neighbors and establishing a more harmonious local community by voluntarily resolving disputes at the neighborhood level. Furthermore, the resolution of disputes between neighbors through community mediation also reduces the caseload for the court because it resolves potential legal disputes before they reach the court. Therefore, it is worth studying neighborhood dispute resolution through community mediation not just in terms of fundamentally restoring the relationship between neighbors and reducing social costs, but also for establishing judicial policies.

This study comprehensively examined neighborhood dispute resolution through community mediation and suggested various options to establish and promote dispute resolution through community mediation in Korea. To this end, this study reviewed at general aspects of neighborhood disputes and community mediation: the definition and types of neighborhood disputes, concept and acceptability of community mediation, characteristics and functions of community mediation, and advantages and disadvantages of community mediation. This study also addressed neighborhood dispute resolution systems based on community mediation in various foreign countries where community mediation has already been established and promoted, and further dealt with neighborhood dispute resolution practices via major mediation systems in Korea.

Lastly, after the above review, this study proposed specific and diverse measures to establish and promote neighborhood dispute resolution through community mediation system. First, this study explored how to ensure the independence, neutrality, and expertise of the community mediator. Then, this study reviewed the procedures and effects of community mediation, including confidentiality in community mediation, the status of dispute parties in the community mediation procedure (the active right to statements by dispute parties and the right to choose a community mediator), the proceeding period of community mediation and the deadline for the acceptance or deemed acceptance of the mediator's proposal, the relationship between community mediation and litigation (introduction of pre-

litigation mediation principles and the interruption of prescription for mediation petition), the relationship between mediation procedure and litigation procedures, and the effect of agreement reached by community mediation. In addition, this study examined third party-linked community mediation and other options to establish and promote neighborhood dispute resolution such as strengthening better public relations for community mediation organizations, ensuring local residents' access to community mediation organizations, securing funding sources, and introducing a legal basis for community mediation.

It is hoped that this study will serve as a cornerstone to establish and promote neighborhood dispute resolution through community mediation in Korea.

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Research on the Protection of Confidentiality in Civil Procedure (2022)

- Focusing on *in-camera* Proceedings -

Byung-Min PARK
Judge Researcher

In order to effectively guarantee the constitutional right to trial, the existence of rights and obligations must be properly contested in litigation, and for this, evidence must be smoothly introduced. However, if the party in possession of the evidence claims it falls under the confidentiality subject to protection against production, such kind of challenge would be prone to the consequential retreat to the insubstantiality of the constitutional right to trial, and thus causing a sense of helplessness in the civil proceedings itself.

These consequences would not be limited to concerns. The practice of having an investigative agency collect evidence and submitting it in a civil lawsuit through a criminal complaint ahead of a civil lawsuit, or the so-called 'expedition lawsuit' in the United States for the convenience of evidence collection between Korean companies compels us to ask whether our civil trial system is fulfilling its inherent role.

The discovery system of the United States is often addressed as a breakthrough to solve the above problems, and there are many studies that advocate the introduction of the system by setting their own scope. This study does not intend to delve into the overall disclosure of evidence, such as the introduction of discovery. On the premise of the envisioned expansion of the disclosure of evidence, the scenes of confidentiality to be reviewed in civil proceedings are divided into the evidence collection stage, such as subpoena to produce documents, the open hearing stage, and the access to court record stage, and the confidentiality protection devices required for each stage are reviewed in this research.

First, in case of the subpoena to produce documents, it is necessary to simplify the structure of the relevant rules and regulations while expanding the subject of production to information. The court needs to proceed case management conference to decide the scope of the production, and strictly examine the reasons for refusal to produce documents.

The court should classify the degree of confidentiality in the process of the subpoena to produce documents, and subdivide the scope of access, and permit only lawyers to gain access to the documents when even the highest level of confidentiality shall be subject to submission for litigation interests. So, it is desirable to have a 'U.S. attorney's eyes only' system introduced for this purpose.

There are no detailed regulations on the *in camera* proceedings to determine the reason for refusal to submit documents, and this is also the case in major countries such as the United States, Germany, and Japan. This is the reason why the proper case management

of the court and the cooperation of both parties are indispensably required for in camera proceedings.

Regardless of whether or not to grant the party the right to request for an *in camera* proceedings, provided that the party requests an in camera proceedings, it is appropriate for the court to initiate the proceedings if possible, and the enactment aiming to give the applicant an opportunity to express his/her opinion under limited conditions shall be taken into consideration.

In order to ensure smooth submission of confidential data, it is desirable to incorporate the system for designating the scope of access restrictions and the order to maintain confidentiality provided for in the Patent Act into the Civil Procedure Act. This is because such confidentiality protection is not only a problem in patent infringement cases, but is required in all civil cases such as product liability litigation.

In practice, there is some confusion as to whether the protection of privacy or trade secrets can be included in Article 57(1) of the Court Organization Act, which stipulates the grounds for court sealing. Since confidentiality of privacy and trade secrets of companies are also included in the realm of fundamental rights under the Constitution, when the value of confidentiality is deemed to be superior to the principle of public trial, it would be considered that court sealing is possible in accordance with Article 57(1) of the Court Organization Act. Nevertheless, this needs to be clarified by means of legislation as the provisions of the German Court Organization Act.

There may be a necessity to exclude the opponent party from attending evidence hearings in the trial in order to protect confidentiality. However, this shall not be possible unless legislation to that effect is enacted as it constrains the procedural right of the party.

Lastly, for confidentiality protection, there may arise a question as to whether it is possible to restrict the parties' access to court records, however it also could not be allowed unless there is a legislative basis. Although the relevant system is introduced into legislation, in cases where the need for protection of confidentiality is superior to the guarantee of procedural rights, and where the opinion of the party is seriously considered, the court can grant restrictions on the access of the confidential part. Under this situation, it is recommended that only lawyers have access to the confidential part as much as possible.

In civil procedure, the protection of confidentiality cannot be an aim in itself, but constitutes a means for the smooth disclosure of evidence and further, a proper civil litigation. Therefore, besides implementing a good legal system so that the proper civil procedure can be established as a legal culture, we look forward to communications and sincere efforts taken among practitioners who want to breathe life into this system.

25

Research on the Restructuring of Judicial Mediation System in Korea for Enhancing the Efficiency and Quality (2022)

Chan Young YOON
Senior Judge Researcher

In order to resolve disputes swiftly at a low cost and also to increase the satisfaction of citizens with relief of rights, the utilization of various alternative dispute resolution methods other than litigation is becoming a global phenomenon in modern society. Among them, the most widely used system is "mediation," and particularly in Korea the judicial mediation has a longer history and takes a greater role as well. Recently as delays in remedies through trial have escalated due to the increase in highly complex litigation cases, there is a growing need to expand the role of judicial mediation linked to litigation cases. Also, demand for mediation as a dispute resolution methods to protect personal information and intellectual property is expected to increase with the strengthening of open court proceedings.

Against this backdrop, courts need to bolster the relief of citizens' rights by functioning as the Double-Door Courthouse that effectively provides dispute resolution measures such as "litigation" and "mediation" for various civil disputes. Contrary to the indispensable necessity for strengthening the judicial mediation function, however, the reality is that there is hardly adequate human resources and organizational structure to fully carry out mediation affairs within courts. Despite courts' long-standing efforts to develop the mediation system, extemporaneous measures for improvements have still been repeated due to legal restraints and budgetary limitations. These recurring problems have made the structure of judicial mediation to be placed on a path that is contradictory, complicated, and inefficient.

As a result, the current judicial mediation operation is completely relying on mediation judges, solely as a human factor, and even some courts have inevitably treated it as an attendant task without taking full charge of mediation, consequently facing difficulties in terms of providing consistent and sustainable mediation services for citizens. Therefore, it is necessary to establish at least a physical organization to carry out mediation in parallel with litigation, and based on this, further to institutionalize judicial mediation by empowering courts to manage the continued mediation affairs.

Systemic legalization of the existing Mediation Center can effectively and efficiently enhance citizens' right of access to dispute resolution services and thus create a firewall that protects the fairness and neutrality of trials. In addition to handling individual mediation cases, it is also necessary to organize a general agency for comprehensively administrating the mediation affairs. Through the general mediation center, various functions can be effectively performed, such as performing tasks that support the organic connection between the Mediation Center and courts; exploring external mediation agencies and preparing

effective linkages with trial proceedings; activating mediation system and building trust through public relations; presenting methods to secure sufficient mediation cases; the appointment of mediators and providing systematic oversight plans; qualitative improvement of court-annexed mediation through a mediation agency certification system, etc.; the formation of an integrated network of various administrative and private ADR and the provision of a unified regulatory plan for its legal effects; the introduction of ODR in dispute resolution and the use of AI. The general mediation center can also plays a role as a firewall that separates the above-mentioned administrative tasks from courts that are intrinsically in charge of trials under the Civil Procedure Act.

Considering that mediation is a dispute resolution by the parties' autonomous agreement and the nature of the procedure to facilitate it, there would not be compelling reason for courts under the Court Organization Act, which are institutions with the integral function of adjudication, to be in charge of it. Nonetheless it is difficult to expect the parties concerned who are caught up in a dispute and urgently seek an appropriate resolution process to find an appropriate agency among the diverse agencies in charge of private mediation. As a party concerned, it is convenient to go to courts established all across the country and having competence over disputes in all fields, and knock on their doors seeking for remedies. In order to faithfully carry out relief of citizens' rights, our judicial mediation should be designed in an efficient and specialized structure that enables independent judicial mediation to perform its function separately from the judgment function and be smoothly linked with the courts' judicial affairs.

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10 Years of Civil Electronic Litigation : Achievements and Prospects (2022)

- Focusing on Civil Lawsuits -

Huy Jae CHON
Visiting Researcher

Electronic litigation in Korea began around 2010 when the 「*Act on the Use of Electronic Documents in Civil Procedure, etc.*」 was enacted and the patent electronic litigation system was established, but its origin dates back to the late 1970s. Since the Supreme Court first established the "Judicial Information Computerization Plan" in 1979, judges have developed a case search and judgment-writing program and constructed a database. Computerization of registrations and issuance of certifications were also introduced to improve judicial services to the public. With such progress of judicial informatization, calls for adoption of electronic litigation have been growing from within the judiciary, especially as judges look to other countries that adopted electronic litigation in the 1990s.

Accordingly, in the early 2000s, efforts to prepare legislation and establish systems for electronic litigation began in Korea. As a result of these efforts, the 「*Act on the Use of Electronic Documents in Civil Procedure, etc.*」 was enacted in March 2010. Since then, electronic systems for patent litigation have been constructed in April 2010, for civil litigation in May 2011, and for civil enforcement and non-contentious procedures in March 2015. The establishment of electronic litigation systems for all litigation areas except criminal litigation was completed within five-year period, which was prescribed at the time of enactment of the 「*Act on the Use of Electronic Documents in Civil Procedure, etc.*」 as the latest limit of implementing electronic litigation. It is unprecedented that a legal system of electronic litigation was constructed in such a short period of time, even in other developed countries that have advanced legal systems. What made it possible to construct the systems quickly in Korea was its advanced ICT infrastructure that was established before the implementation of electronic litigation systems, and the Korean people who are relatively quick to adapt to new technology.

More than 10 years has passed, and electronic litigation is now the mainstream of civil litigation in Korea. Regardless of subject-matter jurisdiction, more than 90% of all civil lawsuits are filed and processed through the electronic litigation system. This adoption serves as evidence that Korea has shifted from being a fast-follower, by benchmarking countries that implemented electronic litigation systems before Korea, to a first-mover that now leads electronic lawsuits, on a par with pioneer countries.

However, to further improve electronic litigation in Korea, the judiciary must continue to examine the current state of electronic litigation around the world and draw implications for improvements. With the importance of comparative legal research in mind, this research

firstly examines systems in the United States, which has implemented the electronic lawsuit system firstly in the world in the early 1990s and adopted NextGen, a next-generation electronic litigation system. This research also reviews systems in Singapore, the first Asian country that implemented electronic litigation and now seeks to innovate its system via state-led judicial reform. In addition, this research explores systems in Germany and Japan, which went through a long preparation process to carefully and thoroughly revise their Civil Procedure Acts to implement electronic litigation and are now developing systems for electronic litigation. Finally, this research reviews systems in China, which has implemented online courts and the blockchainization of electronic evidence by utilizing its advanced ICT technology.

In Korea, the establishment of the "next-generation electronic litigation system" which is expected to be completed in 2024, will be the first gateway to enter a new stage of electronic litigation. Korea needs to fully reorganize the current system, which will be outdated, to improve access to trials, and preemptively respond to rapid social changes and technological advances caused by big data and artificial intelligence. If the "next-generation electronic litigation system" is implemented as scheduled, it is expected that an innovative and user-friendly electronic litigation environment will be created.

It is, however, disappointing that there has not been any noticeable improvement in the institutional preparation for electronic litigation. The 「*Act on the Use of Electronic Documents in Civil Procedure, etc.*」, the lex specialis that was hastily enacted to prepare a normative basis for implementing electronic litigation within 5 years with only 16 articles remains in effect. As a result, the Civil Procedure Act, designed to lay out the rules for traditional, paper-based civil litigations, is losing its relevance to today's real-world litigation. As new wine must be put into new bottles, the Civil Procedure Act should be amended to address the new litigation environment based on electronic litigation, and norms should be redesigned to fit the new ICT environment. It is necessary to establish infrastructure to actively utilize the remote video trials, which has suddenly become widely used due to the COVID-19 pandemic, and to develop strategies to promote a speedy and efficient trial by adjudicating small claims cases online, adapting to the current non-face-to-face and non-contact era. It is also time to carefully devise principles for the use of artificial intelligence in the judiciary based on a social consensus in order to prepare for the impending era of artificial intelligence.

27

A Study on the Ways of Improving the Litigation Aid System (2022)

Mijeong PARK
Research Officer

In civil proceedings, it is a basic principle that litigation costs are borne by the litigants. However, the courts are operating the Litigation Aid System to guarantee the constitutional right to trial even for those who lack the financial capacity to pay litigation costs.

In the former Civil Procedure Code, litigation aid was regarded as a remedy for the poor based on the grace of the state; however, in the current law, it is regarded as a system to realize the philosophy of the welfare state in the 20th century.

Korea's Litigation Aid System which has been in force for more than 60 years with the enactment of the Civil Procedure Code, has been further developed through the revision, and is well-established as an effective system with relaxed requirements and expanded scope. However, the reality is that the Litigation Aid System is still not active due to various restrictions.

This research report investigates the problems of the Litigation Aid System in respect to the legal basis, budget, requirements and effects, and operation method, and suggests what our system should aim for in the future, based on the implications obtained from comparative reviews of the litigation aid systems of other countries.

To begin with, in terms of the legal basis, although the Litigation Aid System is one of the important systems related to the guarantee of "right to trial" which is a basic right under the Constitution, some matters are stipulated by the established rules that are only internally binding instead of the laws or rules that are externally binding. This research report examines that point and emphasizes the need to elevate the regulations on such matters to Supreme Court Regulations.

Next, the budget for litigation aid is allocated by the Judicial Service Promotion Fund, which is raised by the court's deposit contribution fund, and its operation is very unstable. This report considers this issue and suggests how to allocate and secure the budget for stable operation, such as the change from fund to general accounts, the establishment of special accounts, etc.

Then, in terms of litigation aid requirements and effects, it is necessary for the development of the Litigation Aid System to review and focus on the relaxation of litigation aid requirements, the expansion of its scope, the diversification of its effects, etc.

Last but not least, by examining operational problems, the future directions of the

Litigation Aid System are suggested from different angles; activation of litigation aid based on the principle of ex officio; expanded application of the Designated Agent System; seeking the ways to prevent prejudice on the merits and abuse of the Litigation Aid System; cooperation with the Korea Legal Aid Corporation, etc.

The systems are constantly evolving in order to use limited resources efficiently. In this context, it is expected that the Litigation Aid System will also be improved to contribute to strengthening the people's right of access to justice, and it is hoped that this research report will contribute to this development.

28

A Study on Countermeasures Against Abuse of Procedural Rights (2022)

Seung Yeon CHUNG
Judge Researcher

In recent years, there has been a notable increase in cases where individuals indiscriminately and repeatedly file lawsuits or applications against state agencies, judges, and court officials without any reasonable grounds. This vexatious litigation disrupts judicial proceedings and distorts judicial statistics. The current methods employed by frontline courts to address such cases are insufficient, and the burden on judges and court officials continues to be aggravated. Thus, there is a pressing need to devise practical and effective countermeasures that can be promptly implemented across all levels of the judiciary.

As part of strategies for utilizing current systems, this study proposes: (1) establishing specialized judicial panels for vexatious litigation, and improving efficiency in documentary management and adjudication by ordering electronic documentation for paper-based filings; (2) expanding the application of ex officio dismissal of lawsuit without ordering amendments or holding pleadings, preemptively utilizing ex officio orders for furnishing security for the costs of the lawsuit, and applying the dismissal of appeal without holding any pleadings.

To implement and refurbish relevant rules, regulations and guidelines, this study suggests: (1) revising the system for the suspension/deletion of the electronic litiagation user registration in order to explicitly include abuse of proceeding as grounds for suspension or deletion, establishing specific rules for suspension periods, and prohibiting re-registration for two years after deletion; (2) supplementing procedural rules to provide a legal basis for temporarily withholding the court's acceptance of cases related to abusive litigation.

As legislative measures, the study proposes the following suggestions for improvements: (1) amending the Act on the Stamps Attached for Civil Litigation and related laws to allow courts to withhold acceptance of electronic filings by vexatious litigants or of cases involving unpaid or underpaid filing fees; (2) adding abuse of procedural rights as a legal ground for presiding judge's order for rejecting the written complaint; (3) reforming the legal aid system to restrain its misuse or abuse by vexatious litigants; (4) arraying the system for service of process on the counterpart in cases involving abusive litigation; (5) introducing an administrative fine imposition system for the default as an ex post measure.

Lastly, this study emphasizes the need for a new court-led system specifically designed to regulate vexatious litigants, including prefiling order and litigation restraint order.

29

Research on Improvement Measures for Civil Construction Litigation in Korea (2023)

Nara HAN
Judge Researcher

Given the highly specialised, technical, and complex nature of construction disputes, the civil construction litigation process would be difficult, time-consuming, and costly in terms of practice. In Korea, in order to ensure the just, faithful and efficient trial in the civil construction cases, special civil divisions on construction are established in several district and high courts; expert evidence is commonly employed in most construction cases that require special technical knowledge; and for greater expertise, a "Construction Case Specialist Judge" and a "Standing Technical Adviser" system are implemented in the construction litigation sector. In addition, several practical handbooks and programs are in place to help with expert evidence procedure and construction litigation practice.

Despite the above efforts, problems regarding civil construction litigation still remain unresolved in Korea. They are mainly related to the expert evidence system, such as a lack of qualifications for experts and a lack of expertise and preparation of litigants, which contribute to poor results, delayed procedures, and high costs. Moreover, due to the complexity, numerous case-dockets, and various types of construction cases, construction litigation per se is a complicated and convoluted process. Consequently, the above factors lead to delays in litigation, lowering the parties' satisfaction with the procedure and causing a negative impact on the public's trust in the judicial system.

In order to solve the problems and improve the civil construction litigation system in Korea, efforts should be made to draw implications by reviewing related systems in foreign countries as well as to examine Korea's current situation. First, the UK has established the Technology and Construction Court (TCC) dedicated to construction cases. Adjudication and the Pre-Action Protocol for Construction and Engineering Disputes successfully has played a part to reduce the amount of litigation. When the disputes end up in litigation, the courts' case management power and pre-trial preparation are to be strengthened to ensure intensified proceedings. Furthermore, the expert evidence system is employed to supplement the expertise of the court. In Germany, courts and construction-related associations are closely connected to guarantee the qualifications of experts, who are publicly appointed and managed by Chambers of Commerce. It focuses on the role of experts as advisors and the parties' right to participate in the process. Expert evidence system is also important in France's civil construction litigation, which appoints an "Especially Entrusted Judge" to supervise the expert evidence proceedings. The adversarial principle should also be abided by in expert evidence procedures, and several expert meetings (Accedit) are held

before submitting the expert report in order to inform the parties thereof and allow them to comment thereon. Additionally, Judicial Experts are registered and managed in a strict manner by the Court of Cassation and each Court of Appeal, and several entities are involved in qualification screening for the registration of the list of experts. In Japan, the Committee on Construction Lawsuits, composed of both experts and lawyers, is involved in the recommendation and management of each expert. It discusses the improvement measures for civil construction litigations. Japanese courts have established specialist divisions to deal with construction cases and have provided standardised proceeding models and Scott Schedule examples regarding some types of construction cases to promote efficiency in dealing with cases. Recently participation of Technical Advisers has been on the increase to bolster the expert knowledge in the proceedings.

Based on the analysis above, this research suggests the specific improvement measures by categorizing following three parts; efficiency of proceedings, qualified expert system, and strengthened professionalism.

In the pre-trial stage, this research proposes "Case Management Information Tables" and "Case Management Plan Tables" to be used by courts and the parties to set down a detailed plan. The research also makes suggestion to amend the Supreme Court's Civil Procedure Regulation for the purpose of providing the legal grounds for planned trials. Examples of tables which clearly set out the issues and evidence in dispute should be provided and available on the website. At the expert evidence stage, it is emphasized to operate the date for expert testimony substantively by using preparation orders and a step-by-step checklist, and also to revise the existing Supreme Court's Practical Guidance Manual for the purpose of encompassing mandatory expert meetings where experts, parties, their representatives etc. should be obliged to attend. To prevent delays, it proposes the implementation of deadlines within which an expert is to submit his or her report, parties are to give necessary documents to the expert and submit questions as to an expert's report. Revision of previous handbooks and standard forms, and the development of calculation programs for the reimbursement on the delayed performance are also suggested. This research offers an example structure of judgment in a specific type of construction case.

Next, regarding the qualification of experts, a construction expert selection and management committee should be established and the current evaluation of experts in specific cases and expert list adjustment system need to be activated. With respect to the evaluation system, it is also necessary to enable the evaluation of collegiate panels and the presentation of opinions on the evaluation of lawyers (representatives) and standing technical advisers, and to notify the examiners of the results of the case.

Finally, in order to strengthen the expertise of civil construction litigations, it is suggested that standing technical advisers should participate in at an early stage of every construction case in principle, and furthermore if possible, especially in small-scale cases, they can take part in as a technical examiner in the Intellectual Property High Court. To this end, it is necessary to promote a joint participation order by two or more standing technical

advisers and enlarge the number of standing technical advisers.

This research additionally proposes implementation of the Examination Dedicated Judge system that uniformly and intensively manages expert evidence procedures; ultimately the establishment of the Examination Center led by construction case specialist judges, examination dedicated judges, standing technical advisers etc.; the introduction of a British-style adjudication system in the long term.

30

A Study on the Legal Issues of Smart Contracts (2024)

Junghwan KIM
Professional Researcher

There has been a lot of interest in blockchain-based smart contracts recently. Smart contracts boast the advantages of reducing costs, guaranteeing contract performance, and achieving high security, and are increasingly being used in various fields. Some of the most prominent areas where smart contracts are being used, or are expected to be used, include combinations with the Internet of Things(IoT), online voting, insurance and claims, real estate sales, logistics management, and finance. This has led some to argue that smart contracts could replace traditional contracts. However, there is also a negative view that smart contracts are not likely to replace existing contracts, but rather will only be used in limited areas, citing the limitations of the code itself, the possibility of errors, and the possibility of hacking. These conflicting views show that the debate on smart contracts is still disorganized, and many issues such as the legal nature of smart contracts and the legal issues that have emerged or may emerge due to smart contracts have not yet been clearly resolved.

This research report aims to summarize the existing discussions on smart contracts, seek solutions to the problem of legal regulation of smart contracts, and address the right direction for regulating smart contracts in the future. Starting with a discussion of the concept of smart contracts, the blockchain technology on which most smart contracts are currently based, and the structure and basic operation of smart contracts, this study examined the specific fields in which smart contracts are being used, the legal regulation of smart contracts, and what should be considered for the future regulation of smart contracts.

III Criminal Law

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1

Research on the Improvement of the Indigent Defense System (2014)

Sihoon YANG
Judge Researcher

The focus of this research is to review the development and current state of the indigent defense system in Korea and the operations of public defense systems in foreign countries such as the US, UK and Japan and, based thereon, explore the areas where indigent defense systems can be improved and propose viable policy alternatives.

Various criticisms and alternatives have been raised on the matter of who assigns and manages indigent defenders. But this research argues that it is most desirable to maintain the current system and supplement the areas requiring improvement.

Regarding improvement of the procedure for assignment, this research proposes blind interview and greater transparency in the composition of the interviewer pool.

With regard to compensation for general indigent defenders, this research finds that 'Promoting increase of compensations pursuant to existing criteria of compensation increase,' rather than increase of base compensation, is the more reasonable method of improvement, and the current (2014) amount of compensation for indigent defenders is within a proper range. Regarding workloads of indigent defenders, this research argues that it is undesirable to make changes at present. With regard to funding, the research points out problems resulting from the current dualistic system and makes proposals as to how it could be improved.

Regarding the methods of improving management, this research suggests supplementary measures of performance review, strengthening of retraining programs, and cooperation among indigent defenders.

In conclusion, if the aforesaid methods are used to take necessary supplementary measures while maintaining basic framework of the current indigent defense system, it is possible to realize the original goals of the system and to also maintain trust in its operation.

2

The Sentencing Guideline System in England and Wales (2015)

- A Current State Analysis of the Statutes and Its Operation

Jeeyoung BYUN
Professional Researcher

The sentencing guideline system that allows consistent and transparent sentencing will enhance public's trust in the judiciary and further realize the judicial justice. Nonetheless, devising a policy for reasonable yet understandable sentencing guidelines is not a simple task, but calls for a comprehensive study of such in advance, addressing issues from various perspectives. In this line of context, studying English system of sentencing guideline becomes a prerequisite for reviewing the Korean system, having a similar description-based model.

After going through an in-depth study on the sentencing guideline system of England and Wales with a special focus on its statutes and the current status, this research reinvites readers to the following points. First, having a 9-step decision making process with a clear indication of the starting point of sentencing, the English sentencing guideline seems relatively easy to follow. Second, it is also worth noting that the Sentencing Commission in England and Wales is continuously outreaching to the public to improve understanding about sentences and to build confidence in the judiciary. The fact that the Sentencing Commission of England and Wales now has greater authority in the area of analysis and research deserves attention as well. The Sentencing Commission not only produces vast amounts of research and educational materials, but it communicates with the public by engaging the community in its research and by providing greater access to relevant information.

3

Research on Determining the Admissibility of Digital Evidence (2015)

Joo-Seok KIM
Judge Researcher

Due to the development and advancement of Information Technology, various forms of digital evidence are increasingly submitted in criminal courtrooms, and henceforth the admissibility of digital evidence has become an immediate issue.

When we apply the established admissibility rules such as exclusionary rule and hearsay rule to digital evidence, we face the problem of to what extent we need to consider the unique characteristics of it. And we also need to consider the issue of whether any special requirement for digital evidence is necessary for it to be admitted in trial.

This study summarizes what has been discussed on the issue of digital evidence and forensics, reviews the cases dealing with admissibility of digital evidence both in Korea and other foreign countries, and suggests guidelines or checkpoints that can be of effective uses in determining the issue.

Firstly, in relation to exclusionary rule, it is notable that the U.S. courts mostly decide whether to suppress digital evidence within the framework of the Fourth Amendment, which provides people's right to be secured against unreasonable search and seizure and requires any warrant to be judicially sanctioned. In Germany, there is a legal theory of 'Beweisverwertungsverbot' that corresponds to exclusionary rule of the U.S., which determines whether or not the evidence should be excluded in accordance with the proportionality principle on the infringement of fundamental rights. In Korea, the Supreme Court cases often deal with the issue of responsiveness in execution of warrant and whether the related government action is beyond the scope of warrant.

Secondly, the Supreme Court of Korea in recent series of cases ruled that digital information must be identified and authenticated to be admitted as evidence because of its vulnerability to alterations. Such holdings seem to be similar to some discussions about authentication and identification in the U.S. evidence law.

Finally, in deciding whether to exclude digital evidence in relation to hearsay rule, the U.S. courts tend to focus on such issues as whether or not the evidence is hearsay, and if so, whether there are any circumstances that allow an exception to hearsay rule. Whereas whether the declarant acknowledged its authenticity in court is often the main issue in Korea.

Based on the cases above, we suggest some possible guidelines and checkpoints which might be helpful in deciding the admissibility of various types of digital evidence.

We hope this research would help promote further discussions about the issue in both academic and legal professional fields.

4

Research on the Considerations for Courtroom Examination of Vulnerable Victims in Sexual Assault Cases (2016)

Jae-Seok RHEE
Senior Judge Researcher

It is noted that victims of sexual assault are in a particularly vulnerable and distressing position in a courtroom. Court needs to exercise reasonable control over cross-examination to make the victim-witness examination process less stressful.

This research aims at developing considerations designed to make giving evidence in court less traumatic for victims of sexual assault. These considerations are intended for the judges, prosecutors and lawyers responsible for the sexual assault trial.

Rape Shield Laws of foreign countries are analysed and summarized for this purpose. Inappropriate or unnecessarily aggressive questions in cross-examination are categorized into several types in order to provide optimal considerations. Also, the right to cross-examination and fair trial are fully considered to propose the desirable considerations.

5

Research on the Improvement of the Search and Seizure Procedure (2016)

Joo-Seok KIM
Judge Researcher

The aim of criminal procedure is to achieve harmony between two possibly conflicting goals: protecting constitutional freedom or minimizing the intrusion of constitutional rights, and defending social security or protecting society against crime. Searches and seizures, as coercive means of investigation, may intrude the constitutional rights of interested persons or entities. The Constitution and the Criminal Procedure Code mandate due process and the judicial control by warrant requirement for these measures. Accordingly, the court is charged with the task of ensuring the adequacy of searches and seizures on each stage of the criminal procedure; from the issuance of warrant, through the execution thereof, and to the decision about whether to admit or suppress the acquired evidence pursuant to the exclusionary rule in a related trial.

From the past, there have been unceasing criticisms that in Korea, searches and seizures are performed too comprehensively and broadly, leading to massive intrusions on the interested parties' fundamental rights and to unduly excessive interference with related businesses. This is usually due to the long-existing customary practices of removing all papers or computer devices regardless of their responsiveness to the suspected crime to the offices of investigation and performing covert examinations targeting vast quantities of properties and information therein over a long period of time. That is why the rationalization of the search and seizure process is urgently needed. At the same time, however, we cannot let the effectiveness of the investigation to find the truth be largely sacrificed by highlighting only the value of protecting fundamental rights and just overlooking the other value of truth-finding and the realization of justice.

Therefore, this study first focuses on comparing how major countries such as Japan, the U.S. and Germany provide and operate search and seizure procedures in order to harmonize these two conflicting aspects and ensure that proper service is done. For this purpose, we first summarize the existing codes and case laws, and then introduce the current academic and practical discussions of the aforesaid foreign countries surrounding the interpretation and application of their laws on search and seizure.

Then using these discussions as references, we seek to find some possible legislative and practical ways of improving the current system. Specifically, the substantial hearing system for the issuance of warrants, the electronic warrant process, the separate issuance of search warrants and seizure warrants, additional ex ante regulations, the guarantee of the right to attendance in execution, judicial control after the execution of warrants, and revitalization of

motions for the return of property are the main topics addressed in this study.

Hopefully this research will help promote further discussions about checking the current status of the search and seizure procedure in Korea and seeking reasonable measures of its improvement.

6

Research on Improvement Measures of the System of Motion for a Formal Trial (2016)

HyungJin KIM / Minkyung HA
Judge Researcher / Professional Researcher

Every citizen shall have the right to a speedy and fair trial and, most of all, a criminal defendant shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary according to article 27(3) of the Constitution of the Republic of Korea. Since the doctrine of prohibition of changing judgment disadvantageous to defendant has been applied to the formal trial procedure against a summary order, however, the defendant's motion for a formal trial has increased, which is burdening judges with unnecessary judicial workloads, exacerbating the quality of judgment in general, and infringing upon citizen's right to a fast and fair trial.

The present research aims to introduce a system of motion for a formal trial that can realize the people's constitutional rights without being abused for other deviational purposes. For this, Part II explores the current status of the system of motion for a formal trial based on the analysis of statistical results from a nation-wide survey of district court judges. Also, Part III addresses the problems of the current system, ranging from the motion for a summary order to the final judgment of a formal trial. And, Part IV studies related analogous system of foreign jurisdictions including US, UK, Germany, France, and Japan. In conclusion, in Part V, this research offers recommendations for enhancing the system based on the outcome of comparative legal analysis.

To elaborate by steps, this research suggests efficient and speedy measures in respect of the summary procedure such as expanding the scope of cases that are subject to a summary order, explaining and confirming the defendant's intention for a summary trial, and determining the exact place of notification. With regard to the phase of motion for a formal trial, it proposes to classify cases in accordance with the grounds for motion and offers practical examples of disposing recovery right for a formal trial. Also, it suggests to abolish the doctrine of changing judgment disadvantageous to defendant, and introduces the alternative policy such as building the sentencing guideline on formal trial procedures. For the formal trial step, it presents ways for a simplified trial and suggests the use of an electronic summary filing procedure.

This research recommends allocating decisions based on the complexity of cases as a solution to managing the caseload given the limited judicial resources: disposing simple and petty cases by summary procedure, complex and important cases by thorough trial process. It is necessary to control the number of cases that can be allowed for a formal trial by introducing a simplified procedure. It is crucial to construe a solution to bring efficiency

on disposing the system of motion for a formal trial for the sake of the defendant's defense rights and the establishment of due process. It is expected hopefully that the discussion carried out in this research will draw public attention and have influence on the legislation process.

7

Comparative Legal Research on the Effect of Defendant's Sensibility to Punishment on Sentencing (2016)

Minkyung HA
Professional Researcher

The defendant's particular degree of pain caused by collateral consequences following criminal sentencing is referred to as "sensibility to punishment" and it has been considered as a mitigating sentencing factor for a long period of time in Korea. In recent years, however, negative public opinion has been on the rise, stemming from the people's distrust in the judiciary, based on the belief that courts are biased towards socially and economically successful defendants. This research examines how the foreign jurisdictions have been dealing with the issue using a comparative law method.

Firstly, the present research establishes the notion and rationale of sensibility to punishment. Secondly, it analyzes model cases on the types of sensibility to punishment such as job loss or the prospect thereof, family's suffering, special damage caused by defendant's illness or age, etc. The subject of analysis also includes the results of the survey conducted among active judges. Thirdly, by means of a comparative law analysis, acts, court decisions, theories and systems of overseas jurisdictions such as the United States, the United Kingdom, Germany, Sweden, France, Japan are studied.

For example, in the United States, the defendant's sensibility factors are considered in sentencing as departure and variance elements. And, 'social status' which cannot be considered in departure evaluation is not synonymous with 'job loss' and therefore downward departure is allowed based on the possibility of defendant's job loss. Also, there is a systemized website offering information on federal and state collateral consequences so that anyone can search for the consequences of sentencing. In the United Kingdom, considerable discretion is given to judges. So, even if a sentencing judge considers the particular sensibility to punishment of a defendant, it can still be a decision within the guideline. In Germany, there is a general provision in the Criminal Code that allows for considering the defendant's sensibility to punishment and courts emphasize whether the factors are considered in the sentencing process. In Sweden, detailed types of sensibility to punishment are stated as downward and exemptive sentencing factors in the Criminal Code. In France, the effect of the defendant's job loss depends on the individualization of punishment and whether the criminal record card states the sentencing. In Japan, the disbenefit and penalty that the defendant becomes subject to, as well as public sentiment towards punishing criminals, are all reflected in sentencing.

Hopefully, the discussion and proposition made in this research will contribute to surmounting the danger of standardized sentencing guideline and to establishing a fair sentencing system in Korea.

8

Research on the Efficient Management of Complex Economic Criminal Cases and Methods of Evidence Examination (2016)

: Based on a Comparative Legal Analysis of Specialized Economic Chambers

Jin-pyo HONG
Senior Judge Researcher

Given limited judicial resources, it is no easy task to allocate significant time and money to complex and complicated economic criminal cases that are characteristic of a large number of witnesses and copious documentary evidence. Even if one were to attempt this, it is unable to render substantive justice by finding truth and punishing law offenders through trial-based proceedings. Thus, it is necessary to manage large-scale economic criminal cases and employ methods of evidence examination in an efficient manner. Korea and numerous other countries have developed various management systems for large-scale economic criminal cases given each country's respective political, economic, social, and historical background.

This research aims to identify the current state and problems of the Korean management system, and conduct a comparative analysis among other countries, based on which long-term and short-to middle term improvement measures are examined.

The present research begins by expounding the definition and categorization of economic criminal cases in Korea, and articulating the general characteristics of Korean economic criminal trials that require more time and money on witness examination and other evidence examination compared to other criminal cases because the defendant often denies charges despite relatively low acquittal rates. It then look into the establishment and status of chambers that specialize in and exclusively hear economic criminal cases, the modus operandi and problems of the management and methods of evidence examination of complex economic criminal cases.

Second, this research conducts a comparative analysis among different countries including Germany, France, Japan, the United States, and the United Kingdom identifying similarities and differences in methods of management and evidence examination. While Germany, France and Japan have specialized courts and chambers for complex economic criminal cases, the United States and the United Kingdom do not. In the aforementioned countries, case assignment is not often modified over the short run so as to prevent instability in the handling of criminal cases. Although minor differences remain over details of their respective management systems, the all aforementioned countries differentiate between complex economic cases or cases where charges are denied by the defendant and simple minor economic cases including economic cases where the defendant does not deny charges due to plea bargaining. There is a fast track for the latter for which the procedure is simplified and expedited. In terms of complex and complicated economic cases, there

are various systems that help the court find the substantive truth efficiently by means of sorting issues and evidence through trial preparations and intensively conducting evidence examination on trial.

Based on such a comparative analysis, the present research purports to examine and prescribe specific long- and short-term improvement measures for addressing problems of the current system and judicial practices in Korea. Such long- and short-term improvement measures should be proposed based on a comprehensive understanding of criminal law and criminal procedure, and the public's consent on the importance of striking a balance of interests between the defendant and the victim, as well as peace and stability of our society governed by law. Hopefully, this research will contribute to growing discussions among not only scholars, experts and practicians in the relevant field but also the general public in presenting alternative policy and legislative proposals that effectively manage complex economic criminal cases and methods of evidence examination in Korea.

9

Research on Written Jury Instructions (2017)

Jin-pyo HONG
Senior Judge Researcher

Jurors who take part in citizen participation trials are lay members of the public who are either completely unfamiliar with or lack knowledge of the substantive law on charges, procedural law on trial, evidence law and relevant case law. Therefore whenever necessary the presiding judge needs to explain the legal issues and trial procedure, rules of evidence to the jury in order to ensure a fair and rational verdict.

The judge panel hearing a citizen participation trial should set out the jury instructions before the trial date, and once the trial begins the presiding judge should distribute the instructions to the jurors and provide an oral explanation. The jurors should refer to the instructions on the issues, legal principles, rules of evidence, evidentiary relationship in evaluating evidence presented in court and determining the question of guilt and innocence. Also, after the closing arguments are made the jury should rely on the instructions to deliberate and reach a verdict. Given the above, jury instructions have a significant impact on how fairly the jury reaches its verdict.

Written jury instructions are prepared in order to ensure a fair and rational verdict by the jury. For the purpose of facilitating effective communication between the presiding judge and jurors the following is required. Written instructions should be structured logically and laid down in easily understood language. The members of the jury should be able to reach a verdict objectively and neutrally without being influenced by the position of the presiding judge. The jury should receive sufficient explanation on charges, legal issues, legal principles, relevant case law, trial procedure, rules of evidence, evidentiary relationship, procedure regarding jury deliberation and verdict in order to reach a verdict that complies with the truth.

Given the influence of written jury instructions on members of the jury there are numerous arguments being made with respect to improving the current instructions. Many argue that written jury instructions should be made in uniform fashion regardless of the judge panel, and that the opinion of attorneys and public prosecutors should be reflected in the written instructions, and that like in the United States there should be a committee that prepares a standard model for written jury instructions to which judges can refer to in writing instructions for specific cases.

Citizen participation trial is a mixed system between jury trial and layman judge system. Therefore it is different from the jury trial system of Common law countries like the United

States and United Kingdom, the layman judge system of Continental law countries like Germany and France, and the court system of Japan. Due to such differences it is difficult to incorporate in Korea the systems of other countries. However it is necessary to examine the particularities of each system and take into consideration how jury instructions are prepared and how they are written.

The present research focuses on setting a form and standard for preparing written jury instructions, keeping in mind that different instructions of various judge panels can adversely influence the jury verdict. Since it is impossible to prepare appropriate written jury instructions for every case, this research provides numerous forms and standards for different types of cases, so as to make is possible to choose between such instructions. Attorneys and public prosecutors can offer their opinions and if the judges deem it appropriate they can be reflected in the written jury instructions.

Hopefully much attention will be given to written jury instructions and the presiding judges' instructions so as to generate interest in this field thereby stimulating further research on the subject.

10

The Exclusion of Evidence in the United States (2017)

: Motion in Limine and Motion to Suppress in Criminal Cases

Hyun Jung SONG
Professional Researcher

In United States criminal proceedings, the prosecution and the defendant frequently employ motions to ask the court to determine the admissibility of certain evidence which is deemed irrelevant, prejudicial or was illegally obtained before a trial begins. Upon the motion, the court makes an evidentiary ruling admitting or excluding the evidence. Such motions to exclude evidence before trial enable the court to minimize unnecessary trial interruptions by holding separate evidentiary hearings.

There are two types of motions that are most often used to exclude evidence. One is a motion in limine that is appropriate in both civil and criminal proceedings, the other is a motion to suppress that is available only in criminal cases, not civil cases.

A motion in limine is a request that the court rule on the admissibility of evidence in advance so as to bar presentation of prejudicial evidence which may cause the jury to make irrational or emotional decisions. A motion in limine should preferably be raised prior to a trial, but can be brought up at any time during trial. As for an interlocutory appeal of a trial court's ruling on a motion in limine, since this ruling is preliminary in nature and subject to change during the trial, it is not appealable. Thus, where the court grants or denies a motion in limine to exclude evidence and indicates willingness to reconsider its ruling, the mover must renew its objection if the evidence is offered during trial and make an offer of proof to preserve the issue for appeal.

Meanwhile, a motion to suppress is a request that the judge exclude illegally obtained evidence from consideration by the judge or jury at trial. A motion to suppress stems from the exclusionary rule that forbids the use of evidence obtained in violation of a defendant's constitutional rights against him or her. A motion to suppress shall be made before trial, otherwise the motion is considered untimely and may not be considered unless good cause is shown. Before ruling on the motion, the court retains discretion to hold an evidentiary hearing. If the court chooses to hold a hearing, a trial judge may designate a magistrate judge to hear a motion to suppress and thereafter submit recommendations for disposition of the motion, including any proposed findings of fact. The court, however, is not bound by the findings and recommendations of the magistrate judge. The court must decide a motion to suppress before trial unless it finds good cause to defer a ruling. On the federal level, the prosecutor may take an interlocutory appeal from the pretrial granting of a motion to suppress because it cannot appeal a judge's decision or jury's verdict of acquittal due to the double jeopardy principle, whereas the defendant with a right to appeal his or her conviction

cannot appeal the denial of a motion to suppress before the final judgment.

This research focuses on motions in limine and motions to suppress with particular emphasis on their procedural aspects. Hopefully, this research can contribute to the advancement of sound practices for the Korean judiciary in the course of trial, especially at the evidentiary stage.

11

The U.S. Foreign Corrupt Practices Act (2018)

Giu Sung OH
Judge Researcher

In 1977, the Congress of the United States of America enacted the Foreign Corrupt Practices Act ("FCPA") in response to revelations of widespread bribery of foreign officials by U.S. companies. Seeking to restore public confidence in the business community, Congress passed the FCPA, outlawing bribery and imposing accounting requirements on certain securities issuers. These restrictions, however, competitively disadvantaged U.S. businesses operating in international markets and competing against foreign business that were unrestrained by similar provisions. Congress took this issue into consideration and twice amended the FCPA, first in 1988 and then again in 1998. These amendments expanded the FCPA's reach to impose liability on some foreign nationals in an attempt to encourage international anti-corruption efforts and to create a level playing field for business.

The FCPA contains both anti-bribery and accounting provisions.

First, the anti-bribery provisions prohibit 1) U.S. persons and businesses[domestic concerns], 2) U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the Securities and Exchange Commission("SEC")[issuers], and 3) certain foreign persons and businesses acting while in the territory of the United States[foreign non-residents] from making corrupt payments to foreign officials to obtain or retain business. In particular, the Department of Justice("DOJ") and SEC have continued to take an expansive approach to jurisdiction against foreign non-residents by liberally construing the phrase "while in the territory of the United States". Very recently, however, U.S. Court of Appeals for the Second Circuit rejected the DOJ's attempt to expand the extraterritorial reach of the FCPA by holding that a foreign national who does not otherwise fall under "the categories of persons directly covered" by the FCPA cannot be held liable for violating the statute under the conspiracy and compliance doctrines. Whether the Supreme Court will rule on the Second Circuit Appeals Court's decision, or how the above decision will affect DOJ's enforcement of the law, is a matter of interest.

Second, the accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.

The FCPA can result in criminal or civil liability for companies and for their individual

officers, directors, employees, and agents. DOJ has the authority to pursue criminal actions. Under the Alternative Fines Act{18 U.S.C. §3571(d)}, courts may impose significantly higher fines than those provided by the FCPA – up to twice the benefit that the defendant obtained by making the corrupt payment. Both DOJ and SEC have civil enforcement authority under the FCPA. Notably, since 2004, SEC has been seeking disgorgement of profits and prejudgment interests from issuers in FCPA cases. Today, disgorgement often constitutes a majority of the total amount paid by corporations in FCPA resolutions.

There are different types of resolutions with DOJ. Charges against individuals and companies can be brought by DOJ under the Federal Rules of Criminal Procedures. DOJ may agree to resolve criminal FCPA cases against companies either through a declination or, in appropriate cases, a negotiated resolution resulting in a plea agreement, deferred prosecution agreement, or non-prosecution agreement. For individuals, a negotiated resolution will generally take the form of a plea agreement. When negotiated resolutions cannot be reached with companies or individuals, the matter may proceed to trial.

SEC can seek a court order compelling the defendant to obey the law in the future. Also, SEC has the ability to institute various types of administrative proceedings against a person or an entity that it believes has violated the law. SEC often resolves FCPA matters through a declination, deferred prosecution agreement, or non-prosecution agreement.

The FCPA and its enforcement can provide important implications for both Korean lawmakers and businesses. First, it is necessary to reform our anti-bribery laws so that we can impose a criminal penalty on companies and other business entities in a more active way. Second, it is essential to deprive a person or a company of ill-gotten gains through making corrupt payments in order to deter bribery crimes. Third, Korean companies which are operating globally and their officers, directors, employees, and agents must be aware of the significance of the FCPA, substantially implementing a system of internal controls and setting a high value upon compliance.

Hopefully, this research will contribute to understanding the FCPA in general and discussing its recent issues for many global companies and legal professionals.

12

Criteria for Self-defense Judgment and the Public's Legal Consciousness in Overseas Jurisdictions (2019)

Minkyung HA
Professional Researcher

The modern legal system can be said to consist of legal rules, legal systems, and legal culture; and all legal rules and systems reflect respective country's legal culture and people's consciousness concerning the law. The present research delved into comparisons of legal systems in South Korea, the United States, Germany and Japan with a focus on rules, cases and public's consciousness of the law. Before beginning the research, it was hypothesized that in Western culture, where individualism and liberalism are strongly rooted, would allow an expansive interpretation of self-defense, but Eastern cultures affected by collectivism would limit self-defense to a narrow interpretation. However, South Korea has actively embraced change to assert personal rights and call for justice through law since being exposed to Western liberalism and systems of law, so this study endeavored to look into whether public opinion has become critical of judicial precedents that does not actively allow self-defense.

By limiting our research to South Korean self-defense trials with jury participation, an analysis showed that jury verdicts did not differ much from the court's final decisions, and the experimental study conducted to realize the South Korean public's legal consciousness concerning self-defense found that the percentage of the population that acknowledges defense was not high. In cases of South Korea and Japan, the statutes concerning self-defense used the term "unfair/immoral invasion," showing that they were under the influence of traditional legal culture compared to the U.S. and Germany, which define self-defense as a response to "unlawful attack." Moreover, the fact that there was a high percentage of people in the U.S. that admitted self-defense even when the pro forma requirements for its establishment were not met, coupled with precedents that admit Battered Woman Syndrome and allow for self-defense to be established by the strength of individual experience, points to how U.S. citizens' consciousness of law that judges by internal factors rather than external or circumstantial factors, under the influence of the values of liberalism. On the other hand, in the case of Germany, a parallel could be drawn to the fact that unlike judicial precedents that traditionally admit an expansive interpretation of self-defense, a sense of law is gradually forming among the people that reject an excessive admission of self-defense by methods such as weighing the benefit to the law itself in sentencing, and discussions to limit self-defense is gradually expanding.

People's consciousness of the law is not fixed, but changeable. There's even a good probability that legal experts' and citizens' criticism toward judicial precedents on self-

defense will gradually become a widely-held public consciousness on self-defense. Hopefully, this research can serve as a reference when courts set the criteria for judging self-defense that fits public consciousness of the law, by methods such as differentiating the criteria based on case types, in preparation for a changed public consciousness of the law concerning self-defense.

13

A Research on Consular Notification in the Case of Detention (2019)

Sunmi LEE
Judge Researcher

The *Vienna Convention on Consular Relations* is the most basic multilateral treaty regarding consular relations, which prescribes the privileges and immunities of consular posts. This is to ensure efficient performance of functions by consular posts representing their sending states. Most of the member states of the United Nations are the parties of the VCCR, and Korea has also joined the Convention.

Article 36 of the VCCR, which is one of the provisions on facilities, privileges and immunities for a consular post, provides for communication and contact with nationals of the sending state. According to Article 36(1)(b), when a national of a sending state is arrested, imprisoned, or detained in any other manner within its consular district, the competent authorities of the receiving state shall, without delay, notify the consular post of the sending state of its national's detention if he or she requests so. As the consular post serves to protect the interests of the sending state and its nationals, the consular officer shall take the role of protecting the nationals when their physical freedom and rights are restricted in the receiving state. In order to facilitate the exercise of this consular function, the receiving state needs to cooperate with the consular post of the sending state by notifying it the detention of its nationals. The VCCR stipulates that the competent authorities of the receiving state should inform the detained foreigners of their right to request consular notification, while stipulating that the notification to the consular post should be made when requested by the detained foreigners.

Although the consular notification by the VCCR is an important system for the protection of persons who are arrested in foreign countries, Korean courts have not paid much attention to it. The main part of this study is to examine the present codification of consular notification in major foreign countries, aiming to provide implications for the role of our courts in consular notification. In addition, I will also examine the lawsuit cases in which detained foreign nationals were not informed about their rights under the VCCR or not provided consular notification. The International Court of Justice's judgments on the LaGrand case and the Avena case are the most famous examples. This is to find remedies for the noncompliance with the VCCR.

As a result of examining the present legislations in the U.S.A., U.K., Japan, China, Germany and France, we see that the above countries have provided various forms of codification on consular notification, from law and regulations to manuals inside an agency. Most countries require that consular notification should be given in non-criminal detention.

They also have rules about the judge's role in consular notification. In the event when a breach of consular notification occurred, the ICJ considered it to be an infringement of the individual's rights and judicial review and reconsideration should be taken on as a remedy. The U.S. Supreme Court deemed that relief for the breach of consular notification could be granted only under domestic law, and as a result, did not allow judicial review and reconsideration based on the judgment of the ICJ. The lower courts in the U.K. ruled that statements taken from the arrested foreigners who were not informed of their rights to consular notification should be excluded. Federal Constitutional Court of Germany considers that failure of consular notification is the reason for appeal.

Compared with the above comparative studies, Korea has relatively few laws and regulations on consular notification, and there is not enough discussion on related issues. Therefore, the Korean court should give some thought to consular notification, and endeavor for full implementation. Such efforts may include exploring and institutionalizing role that courts should take in regard to consular notification, and researching judicial remedies in the failure of consular notification.

Fulfilling the obligation of consular notification is not only a guarantee of the rights of foreigners detained in our country, but also an effective way of ensuring the rights of our nationals detained in foreign countries. I hope this study will be of some help in raising Korean court's interest in consular notification.

14

Research on Improvement Measures for Juvenile Justice Procedure in Korea (2019)

- Focused on the Possibility of Integrated Operation -

Sunju MOON
Judge Researcher

The ideology of juvenile protection is the basic idea of the juvenile justice procedure for both domestic and international rules. However, as the risk of juvenile delinquency has risen due to the occurrence of violent crime by juvenile offenders or the increase in the recidivism rate of juvenile delinquents, there are many discussions about necessity of punitive turn in juvenile justice procedure.

This research ultimately aims to offer suggestions for an improved system of Korean juvenile justice procedure by summarizing the problems in Korea's current juvenile justice procedure and seeking ways to improve the operation, focusing on the fact that the Korean juvenile justice procedure has adopted the dual procedure and provision in which the prosecutor may determine whether to proceed initially in juvenile or criminal court.

First, this research analyzes the current situation and problems of the juvenile justice procedure through the statistical analysis and the results of surveys of judges who hear juvenile delinquents or offenders. This research also tries to draw some suggestions to complement the problem of the Korean system by examining comparative legal analyses of the US juvenile justice system which tries to combine the dual procedure and the Germany's which operates the unified procedure.

Based on the analysis above, this research examines procedural improvement measure, 1) subdividing the jurisdiction of juvenile cases into local court, 2) operating the unified procedure by same judge who should punish juvenile delinquents and offenders, furthermore as long-term improvement plan, 3) revising laws to integrate jurisdiction of juvenile delinquency and criminal case and 4) establishing the Juvenile Court as a specialized court. For practical improvement measures, 1) clarifying the priority of the ideology of juvenile protection, 2) strengthening professionalism of judges who hear juvenile offenders, 3) imposing probation and special observations on juvenile probation and 4) limiting the roles of prosecutor.

Juvenile delinquency is a result of the manifestation of various problems in our society. Therefore, the resolution of juvenile delinquency should not be approached as a punishment-oriented ways, but should start from a long-term perspective consistent with juvenile protection ideology. Hopefully, this research would contribute to stimulate the improvement of the practice and system of juvenile justice procedure in Korea.

15

A Study on the Reliability Assessment and Experience Rules of Victim's Statement in the Criminal Case of Sexual Violence (2020)

Sunmi LEE / Yong Chul PARK
Judge Researcher / Visiting Researcher

The subject of this study is the experience rules as a criterion for determining the credibility of victim statements, which is one of the main evidences of criminal cases in sexual violence. This study is consisted of two independent parts; the first part focuses on comparative legal studies in regards to the experience rules, and the second part focuses on the analysis of Korean Supreme Court's precedents and lower court judgments of criminal cases in sexual violence.

Part 1 by Yong Chul Park is a comparative legal study mainly focusing on common law countries in the assessment of the credibility of victim statements in sexual violence cases, in particular on whether the statement is consistent with the experience rules.

This study confirms the general discussion of experience rule presented in criminal cases as the basis of judges for determining the reliability of the victim's statement, one of the important evidence of guilt in a sexual assault criminal case, which is absolutely lacking in direct evidence such as witnesses, and examines the details of the experiences or the experiences rule used by professional judges or jurors, mainly in common law countries, through comparative studies.

The judge's experience rule in order to screen the credibility of the victim's statements in a criminal case of sexual violence should not be limited to the conventional wisdom of the general public, but should be the thing of high probability or of same degree of certainty as the science law. In determining the credibility of victim statements in sexual violence and criminal cases, the experience rule is used as criteria for determining the validity of statements, which cannot be arbitrary or uncertain. Therefore, the term, experience rule suggests many things in common law countries that emphasize the role of jurors in determining the credibility of victim statements in sexual violence and criminal cases. The experience that a jury uses to ascertain facts is more likely to be arbitrary than the judge's experience rule. Thus, courts in the common law countries in criminal cases of sexual violence are requesting the exclusion of various prejudices in advance to prevent arbitrary application of jurors' experiences in the form of jury instruction. Such contents of jury instruction has some common ground compared with recent court cases noting gender sensitivity.

Part 2 by Sunmi Lee focuses on critical reviewing the courts' current practice of victims' statements assessment based on the experience rules in sexual violence cases.

Judging the credibility of a victim's statement is not only a matter of evidential value

but also a matter of exceptional admissibility of evidence. As regards the requirements for judging the credibility of a victim's statement, Supreme Court's case law has been formed and developed. The case law in this aspect holds that the content of a statement should be consistent with the experience rules. Although the Supreme Court does not specifically suggest the meaning or content of the experience rules applied in criminal cases of sexual violence, the experience rules in this context must go beyond the simple probability to reach the level of proposition with high probability.

Among the judgments of sexual violence rendered in lower courts across the country until the year of 2016, 474 judgments were carefully selected by browsing the case title 'rape' and the core keywords 'credibility' & 'the experience rules'. Through these judgments, judges present propositions with very diverse and specific contents as so-called experience rules. In addition, the propositions that the court suggests as the experience rules in one case are not necessarily accepted in other cases or at different levels of the same case. An analysis has been made to find out whether some propositions that are currently considered as the experience rules in sexual violence criminal cases have reached to the extent of high probability, though it turned out not to be successful.

The experience rules in criminal cases of sexual violence should not be presented anecdotally, but it should be found and tested using a scientific and empirical manner. Especially, in terms of discussing the experience rules with regard to the victim's intentions and awareness of his/her surroundings, the judgment that the 'average victim' would have acted in a certain way should be ruled out because it is not appropriate to make a judgment how the victim would have behaved in general in determining the credibility of victims' statements. Courts should try to judge more deeply the individual circumstances of the victim and the person itself. The demand for such efforts is understood by Supreme Court's judgment on 'gender sensitivity'.

16

A Study on the Desirable Development Direction of Electronic Criminal Litigation in Korea (2020)

Sungmin JEONG
Judge Researcher

The electronic criminal litigation shall be conducive to enhancing the transparency and promptness of the criminal procedure in a way to digitalize the case files, and substantially guaranteeing the right to inspect the records of those who are involved in litigation, as well as strengthening the efficient concentrative examination in trial. It contributes to safeguarding the defendant's right as well as improving the people's trust in the judicial system.

However, in addressing the challenges arising from the concentration and integration of the criminal justice information and the risks of abuse of them as a result of the introduction of the electronic criminal litigation, the appropriate measures aimed at ensuring proper management of criminal justice information and the adequate protection for the individual right of information self-determination shall be established and implemented accordingly. Furthermore due attention shall be paid in order not to infringe the judicial independence or the fairness of trial, not to mention to make such an appearance in the course of the implementation of the electronic criminal litigation.

In this respect, Germany's electronic criminal litigation system suggests a lot to us, in that it is aimed at dealing with both the concentration/abuse of the criminal justice information and the protection of the individual right to information self-determination possibly ensuing from the introduction of electronic criminal litigation, by prohibiting an investigation agency from retrieving information across all electronic records and instead allowing it to search only individual records selected in advance.

In the preparation for the electronic criminal litigation system to be introduced in Korea in the future, such a system should be scrupulously designed with the encompassing objectives and perspectives towards securely preventing the harmful consequences resulting from the concentration of criminal justice information, systematically guaranteeing judicial independence, and substantially protecting the defendant's right. In addition to these measures, it is also necessary to provide a full and adequate support to the relevant staff in charge of the transition work.

The infrastructure of electronic criminal litigation is a case management based on electronic documents. Therefore, when designing the system, specific settings should be determined for each procedural phase or sector after establishing basic directions on electronic documents, digital signatures, consent to electronic litigation, and electronic filing

and service.

It is hoped that electronic criminal litigation system currently under consideration will be appropriately designed and thereby will be legitimately functioned to implement the purpose of the Criminal Procedure Act, such as expediting the criminal justice process and protecting the defendant's right.

17

A Study of Sentencing Guidelines on Fines (2020)

Kwangkyoon BAEK
Judge Researcher

The Sentencing Commission under Supreme Court of Korea, being established in the wake of the judicial reform, has refurbished major offence-specific guidelines for jail sentences for the past 13 years, however has yet to set forth the guidelines on fines except for the election offence, the amount of which fines will be determinative on the validity of election. According to the statistics, fines penalty accounts for 80% of all the sentences imposed, remarkably well over 90% in some offences, showing far more ratio than jail sentences.

England and Wales in the United Kingdom, and the United States, all of which had introduced sentencing guidelines before Korea, have put forward with the guidelines for some fine sentences. In England and Wales, the sentencing guidelines make it clear to the effect that the priority shall be given on the fines over community and custodial sentences. In the United States, federal sentencing guidelines for individuals and organisations are separated. In Germany, there has been no sentencing guideline, instead having major offence-specific sentencing practice as a form of commentary. Likewise, Japan has no sentencing guideline, but having the concept of sentencing market prices and major offence-specific sentencing practice as a commentary. Except for the United States' federal jurisdiction, fine penalty ratios of above-mentioned jurisdictions stand at approximately 80% of all the sentences, similar to that of Korea.

In Korea, as regards whether or not to introduce sentencing guidelines for fines, there have been pros and cons on the matters involving 3 elements, i.e., sentencing guidelines, fines and offenders' sensibility to sentences, possibly indicating on the formula diversified by 6 manners; combinations of 3 patterns to determine the types of sentences, the sentencing category ranges or both of them, multiplied by variables of general or specific respectively. Each manner has its own merits and demerits, so that we need to be scrupulous enough in seeking the ways to bolster the advantages and to suppress the disadvantages. In addition, the above conclusions shall also be applied in search of sentencing guidelines for organisations, transferring the period of imprisonment for fines, and suspending the enforcement of fines.

18

Hybrid Domestic-International Special Criminal Courts in Transitional Justice Process and the Implications for Korean Unification (2021)

Hyeyoung LEE
Professional Researcher

Since North Korean defectors made assertions of a human rights crisis in the DPRK (Democratic People's Republic of Korea, North Korea), the international community has viewed the situation in North Korea as a human rights issue, a common concern of the international community beyond the interest of individual states. The UN, which is the locus by which the international community manifests itself, has thus called for humanitarian aid to North Koreans, protection of victims, prevention of recurrence, institutional reform, and accountability of perpetrators through the international criminal justice system. In particular, since the UN 2014 Commission of Inquiry (COI) report on human rights in the DPRK concluded that crimes against humanity had been committed, seeking accountability has been the focus of the international discourse on human rights in the DPRK.

But since the DPRK has categorically rejected and showed no willingness to engage with the international community's demand for accountability, achieving accountability under the current circumstance would not be practical. Considering the restrictions, the 2016 final report—prepared by the UN Group of Independent Expert (GIE) on the accountability for human rights in the DPRK—mentioned the possibility of implementing accountability mechanism when a fundamental reform of the current DPRK regime and judicial system is implemented in the future. That is, the group mentioned that the two Koreas have adopted official state policies that aim for unification and that reflection is ongoing as to the implications of unification of the two justice systems. The group further recommended that a comprehensive accountability agenda be included in those reflections and that international expertise on best practice be sought where needed, including on a possible "internationally assisted domestic court" in a unification scenario.

The "internationally assisted domestic court" mentioned by the group is one of the forum types by which international criminal justice is implemented. In the early days of the development of international criminal justice system in 1990s, an international court/tribunal model was preferred to ensure independence and fairness from the political influence of territorial states. However, the international court model revealed some problems of causing political tensions with the sovereignty of the territorial states and conflicts with the values of peaceful settlement and regional integration. In addition, the limited jurisdiction and resources of the International Criminal Court was criticized for failing to address cases appropriately in all regions around the world. As a result, a hybrid court model, which is based on cooperation with the domestic judicial system of the territorial states

and engagement of international judges and personnel, began to emerge and develop as a popular model. Experts in international criminal law have argued that a hybrid court model that has both national and international elements could be an alternative for the forum for accountability in preparation for the possible transition (e.g., unification) on the Korean peninsula as well.

With this background in mind, this research is intended to examine the availability and implications of establishing a hybrid special criminal court that can be considered as a forum of accountability for serious human rights crimes in North Korea, in preparation for the possible transitional period on the Korean peninsula. This research also further examines legal issues and agendas that arose from various cases of existing hybrid special criminal courts in different regions and draws lessons that may shed light on what legal issues and agendas policy makers and designers of the similar hybrid courts in the Korean peninsula should address in the future.

To this end, the normative basis on which this research is based is international law, and the research methodology utilized is a comparative legal research method that compares how international law was implemented in different hybrid courts in different regions. First, through the normative lens of international law, this research reviews whether states have obligations under international law to prosecute and punish perpetrators who are most responsible for international crimes that seriously violate human rights, and this research also acknowledged that crimes against humanity committed by the North Korean regime are international crimes subject to the international criminal justice system.

Second, this research conducts a comparative legal research on existing hybrid courts in Sierra Leone, Cambodia, Kosovo, Lebanon and East Timor, which may shed light on the establishment of a similar future system on the Korean peninsula. In particular, issues that may arise when establishing and designing the hybrid courts regarding the legality of establishment processes, jurisdictional bases, and legal effect of amnesties as possible legal barriers to the exercise of jurisdiction have been examined. The differences in establishment processes and key features in different cases demonstrate that context matters and how differently the hybrid courts could be established and designed in response to different contexts. It is, thus, impracticable to propose a single ideal model to fit all situations. Instead, this research seeks to derive principles and common agendas that should be addressed (e.g., court establishment law, jurisdiction, organization, budget sources, venue location, etc.) and explain relevant advantages and disadvantages for future reference. This will serve as a basic reference for designers of hybrid courts to refer to in the event of a consensus on the need to establish such courts if the future transition period on the Korean Peninsula is reached.

This research, which examines what considerations should be contemplated to establish hybrid courts as a desirable accountability model, will hopefully pave the way for laying the groundwork for achieving peace and promoting human rights on the Korean peninsula in the possible future transition scenario.

19

A Study on Personal Data Protection in Criminal Trial Procedures (2021)

Minhyung LEE
Judge Researcher

The modern information-oriented society, represented by big data and artificial intelligence (AI), has a tendency to widely collect a large amount of personal data from both the private and public sectors, and through various types of information processing, makes information more valuable and useful with organic combinations while enhancing the utility of the services provided. As the industrial and administrative demand for personal data increases rapidly, practices allowing excessive collection of personal data and indiscriminate processing of them, have emerged as a new problem. Accordingly, social demands for the protection and proper use of personal data have arisen, which has led to the creation of the personal data protection legislation that aims at protecting the subjects of data with strong regulatory measures. The demand for personal data protection, which has spread throughout society, extends to criminal justice proceedings made in accordance with traditional rules and regulations comprising the unique attributes. Thus, the right to self-determination regarding the personal data of persons involved in a case is embodied as an extension of the due process of law, which acts as a new control norm for criminal justice agencies. In this context, it is necessary to reorganize the criminal trials into the procedures of the examination of evidence and the hearings that reflect the general principles of personal data protection and the idea of using personal data based on appropriateness. In the existing practical affairs and practices of criminal trials, a vast amount of personal data such as that of the accused, victims, etc. is collected and used in pleadings as evidence, and individuals are actually forced to state personal data such as their addresses or identification numbers, etc. for the purpose of confirming the identity of the parties in the trial process. However, in a new era where personal data protection has emerged as a major social issue, it is hard to keep such practices as they are. The personal data of various data subjects is scattered in the trial records managed by and in the custody of the court in criminal trials, and the security of personal data would highly likely be threatened in the procedure of accessing and copying the trial records in the course of guaranteeing the defendant's right to defense or the victim's right to participate in the proceedings. As a complementary measure for such problems, this paper has reviewed the ways to expand the redaction process in the stage of submission and production of litigation documents. The discussions on the introduction of disclosure system of judgments available on the Internet and also on the expansion of scope in disclosure would inevitably require multilateral analyses and multifold efforts in a bid to protect personal data regarding criminal judgments that contain detailed crime facts and the personal data of many persons involved in the cases. From the aforementioned perspectives, this

paper has targeted to provide the improvement plans as regards the existing standards for the non-real name process and also has sought more flexible and detailed practical operation methods regarding the scope and level of disclosure of criminal judgments.

20

Research on Improving Search and Seizure of Digital Evidence (2021)

- Focusing on Discussions of Legislative Measures -

Byung-Min PARK
Judge Researcher

Digital technology allows a large amount of information to be stored in a data storage medium without error. Network technology allows this information to be distributed to a seemingly unlimited extent. This information, however, cannot be seen without a program to read and display it. All the records of citizens' behaviors and expression materials are stored "as is" in their computers, smart-phones and, internet service providers' servers. The collection and subsequent analysis of these data, particularly when combined with other data, can threaten the privacy of citizens. Such characteristics of digital evidence give government agencies incentives to devote all efforts to the collection of digital evidence for public interest, such as investigations.

In response to changes in social environments, such as the rapid development and popularization of digital technology, rulings of the Supreme Court of Korea and academic theories have been attempting to evolve the existing jurisprudence of search and seizure laws, but, there are limits without legislative changes. This research, thus, focuses on finding ways through legislation to evolve this area of law, including summarizing implications derived from comparative legal analysis of the United States, Germany, and Japan, and examinations of Korea's laws, cases, and practices.

In order to examine the laws and jurisprudence of the U.S., the history and content of the interpretation of the Fourth Amendment by the Supreme Court of the United States, Which is implied by the term "Technology Exceptionalism," were examined in depth. Rule 41 of the Federal Rules of Criminal Procedure that governs searches and seizures, and Electronic Communication Private Act (ECPA) that regulates the collection method of information stored by third parties such as internet service providers, were also reviewed in detail. Furthermore, this research examined decisions rendered by the U.S. courts and discourse in academia to prevent searches and seizures of digital evidence from being conducted under a general warrant, which includes discussions on ex ante regulations, limitation of exceptions to the warrant requirement (e.g., plain view doctrine, search incident to arrest, consent, etc.), extraterritorial application of searches and seizures, and decryption.

Searches and seizures of digital evidence in Germany is thoroughly ruled by the principle of proportionality. Since the legal nature of searches and seizures, excluding wiretappings, is regarded as a public disposition in Germany, pre- and post- notifications, guarantees of right to be present during the search and seizure, and the return or deletion of unrelated information have been emphasized as procedural regulations of searches and

seizures of digital evidence, and a copy of warrant is given in execution of searches and seizures.

With the implications derived from comparative legal analysis, this research offered legislative suggestions and examined improvement measures in the judicial practice of courts in Korea. First, it provided several measures of ex ante regulations that could be imposed by courts, and analyzed in detail the option of issuing a search warrant first and issuing a seizure warrant only after the information to be seized is specified. This research also proposed legislative improvement on the right to be present during search and seizure and reporting of execution results as a way to improve the process for screening crime-related information. This research also examined measures to grant the obligation to return or delete unrelated information after analysis of the storage medium.

As other procedural regulations are considered, this research also suggested not only to present a warrant, but to provide a copy, and to receive verification from the seized person in the issuance of the inventory. This is because having a warrant makes it meaningful to participate in the screening and seizure process, and makes it possible to quasi-appeal against illegal enforcement.

In addition, based on the comparative legal examinations, this research proposed legislative suggestions (e.g., notification of the right to refuse consent, etc.) regarding consent to search of digital evidence, which has been the most debated issue recently and offered improvement measures for information stored by third parties—in particular, subscriber records. This research also analyzed remote searches and seizures, requests to preserve evidence, obligations to cooperate, and etc., which were discussed as new systems, focusing on the bills presented in the National Assembly of the Republic of Korea, and proposed alternatives.

In the modern digital environment, the king of evidence is no longer a confession, but a smart-phone. The delicate legal design for civil rights protection prepared for the statement evidence in the past should be applicable to the searches and seizures of digital evidence as well. It is necessary to turn our backs on the perception of the past that divided the dispositions by legal force on person and on asset, and the latter may be less regulated than the former.

21

A Study on Restorative and Therapeutic Justice in Korean Criminal Justice System (2021)

Kippeum PARK
Judge Researcher

Although approximately 20 years have passed since restorative and therapeutic justice was initially introduced in Korea, the related systems and social awareness still remains at a low level.

In contrast a number of countries including the United States of America, various judicial systems based on the principle of restorative and therapeutic justice such as criminal mediation system, drug treatment courts, and mental health courts have been introduced and successfully operated. The results of the operation of those systems show that both the accused and the victims expressed greater satisfaction and confidence in fairness compared to the existing criminal justice process and that they brought positive effects such as the meaningful decrease in the rate of recidivism and drug use.

These practical effects have a lot of implications for Korea, the country of which demonstrates a relatively low trust in the courts and a considerably high recidivism rate of criminals due to drugs or mental problems.

While Korea has already introduced certain systems such as medical treatment orders by recognizing the need for medical treatment provided to offenders with mental disorders, it is difficult to say that the systems fall under restorative or therapeutic justice because of their institutional limitations. In addition, the criminal mediation process has not been substantially utilized in practice because there are no express legal provisions prescribed to that effect, except for extremely exceptional cases such as attempting the criminal reconciliation under the Act on Special Cases Concerning Expedition, etc. of Legal Proceedings(Article 36).

In the context above, this study has examined the contents, operational status, and limitations of various systems related to restorative and therapeutic justice under the current criminal law provisions and has reviewed various restorative and therapeutic judicial trials that were actually conducted using each of the above systems. Furthermore, in this regard, this study has analyzed the rate of recidivism of the accused who had received a medical treatment order or had been brought to trial based on restorative and therapeutic justice under the Act on Medical Treatment and Custody, etc. The result of the this analysis suggests that the recidivism rate of the accused who were brought to a restorative and therapeutic judicial trial was considerably lower than that of other general criminal offenders. Meanwhile, it also shows that the effectiveness of such systems would be significantly diminished, if an

administering judge would deal with the systems without profound thoughtfulness and thorough understanding on therapeutic justice, and in lack of meticulous scrutiny on the relevant facts surrounding the accused, nevertheless the judge apparently handles two similar systems such as medical treatment orders and probation on condition of medical treatment.

In addition, based on the finding that restorative and therapeutic judicial trials have the practical above-mentioned effects, this study has explored the introduction plans to carry out restorative and therapeutic trials by using current legal provisions, and has searched for the improvement plans through the amendments thereto.

However, ahead of pushing for improvement of systems, prerequisite for the holistic improvement should be to provide the general public as well as legal professionals with systematic education and publicity activities on restorative and therapeutic justice and to design for the implementation of pilot trials based on those measures.

Restorative and therapeutic judicial trials could proceed smoothly only when the accused and the victims required to voluntarily participate in the trials should be sufficiently aware of such systems and have confidence on them. In addition, the educations should be offered to judges who will administer the proceedings on restorative and therapeutic justice, as well as other participants such as prosecutors, lawyers, court officials, probation officers who will play an important role in criminal trials.

On the strength of the above education and publicity activities, pilot trials should be conducted using the currently enacted system. For reference, the number of drug treatment courts in the United States started with only one in 1989, however subsequently recognizing its effect, had increased to 3,057 in 2014. Considering such empirical outcome verified in other countries, it is well recommended for Korea to have several courts designated as pilot trial courts and have pilot trials for restorative and therapeutic justice conducted through a specialized panel in those designated courts, and then evaluate and analyze the results of the pilot programs so as to reflect them for improvement of the system, and gradually expand the scope of the pilot trials in proportion to its identifiable effectiveness.

When implementing the education, publicity activities as well as conducting pilot trials on restorative and therapeutic justice, courts, prosecutors, police, probation offices, etc. which are playing an important role in the criminal justice process should abandon institutional selfishness and cooperate with each other so that the systems could be operated properly. Also it is expected that the relevant laws and regulations shall be amended in the right direction aiming at stably establishing and enhancing the restorative and therapeutic justice system in Korea.

22

Study on the Use of Evidence of the Protocol Prepared by the Investigation Agency (2021)

Sanghoon LEE / Sungmin JEONG / Kwangkyoon BAEK
Professional Researcher / Judge Researcher

The history of the enactment and revision of the Korean Criminal Procedure Act has been a long and bumpy road to constantly reflect on and overcome trials largely dependent on protocols prepared by investigation agency, so-called "protocol trials" and to realize trial-centredness. As a result, the Criminal Procedure Act 2020 restricted the use of evidence in suspect interrogation reports in an unprecedented and innovative manner.

Germany prohibits the use of protocols themselves as evidence in accordance with direct principles, but it allows the presentation of them in the course of investigator testimonies or for the impeachment in question, and the contents of the protocols can be used as the basis for judgment. France seeks efficient handling of cases by professional judges actively presenting and investigating protocols in court. Japan has been trying to realize the principle of trial-centredness by reducing the use of protocol as evidence with the introduction of the trial by lay judges. England and Wales has devised and expanded the hearsay rule to protect the poor status of defendants, but has again reasonably adjusted its scope with the improvement of the defendants' status. The United States selects and reviews necessary cases through a plea bargaining system, but uses police investigators' testimonies, not protocols, in a trial.

The impact of the Criminal Procedure Act 2020 on the overall criminal trial needs to be considered around two pillars: the litigation economy and the ascertainment of substantive truth. In line with the above revision, practices must also be changed, and alternatives including examinations of defendants and witnesses, investigator testimonies, the use of protocols as evidence for impeachment can be considered. The sentencing for denying defendants should also be widely considered.

23

A Study on Protecting Confidentiality of Communications between an Attorney and the Client (2022)

- Focusing on the Criminal Proceedings -

Sanghoon LEE
Professional Researcher

Communication between lawyers and clients has been protected as a matter of the lawyer's ethical duty of confidentiality in both Anglo-American and Continental law. Furthermore, the attorney-client privilege, which protects communications made in confidence in the course of the lawyer-client relationship, has been firmly established as a legal doctrine, particularly in Anglo-American jurisprudence. The purpose of the protection of confidentiality is to encourage clients to provide the attorney with all necessary information and protect information from disclosure against their will. In other words, this is a premise for lawyers to provide their clients with effective and appropriate legal assistance.

However, the Korean Constitution and laws do not explicitly stipulate the general right to be guaranteed such confidentiality, and it is difficult to find that this right is guaranteed through the interpretation of the current laws. The Supreme Court confirmed through the 2009 Do 6788 all-inclusive decision on May 17, 2012, that the right to be guaranteed the confidentiality of communication between lawyers and clients is not rightly derived or recognized by the interpretation of the current laws and regulations. When the submission of evidence is made compulsory, the infringement of confidentiality of communication between lawyers and clients frequently occurs. And such issues are raised in Korea, particularly during the seizure under investigation in criminal proceedings. Without legislative improvement, it would be difficult to solve the current problems.

This study's main goal is to seek legislative improvement measures for the aforementioned issues while also looking for implications by means of comparative legal analysis of relevant regulations in the United States, France, Germany, and other countries. Furthermore, this study suggests legislative measures that would effectively solve the problems in our current system. When settling the system after the relevant legislation, the comparative legal reviews in this study could be utilized as a reference for the interpretation of requirements, exceptions, and procedures for protection of confidentiality.

Various improvement measures to enhance the confidentiality of communication between lawyers and clients have already been suggested in Korea, and some of the related bills are currently pending in the 21st National Assembly. These existing bills are frequently introduced as an 'amendment to the Attorney-at-Law Act.' The amendment submitted to the 21st National Assembly, in particular, provides not only for the protection of the confidentiality of communication between lawyers and clients in general, but also for a general ban on the use of evidence obtained in an infringement of confidentiality in the

state's judicial and administrative procedures.

It is necessary to examine more closely, however, whether the contents of the amendment to the Attorney-at-Law Act are consistent with the legislative purpose and content of the existing Attorney-at-Law Act. A uniform regulation based on a single provision in the Korean Attorney-at-Law Act is not easy to harmonize with the inherent characteristics and legal principles rooted in each procedure while also maintaining the effectiveness of the provision. Furthermore, the amendment simply excludes the use of the evidence at the trial stage, but it does not permit a challenge to the seizure itself. The key to confidentiality, however, is to ensure that confidential matters are not seized by an investigative agency and are not present as evidence at the trial. As a result, the benefits of ensuring the right are limited, and there is still a lack of remedies for infringement of confidentiality.

The attorney-client privileges recognized in the United States are fundamentally a privilege under the law of evidence, a concept from the law of evidence. In the case of criminal proceedings, the court decides whether the privilege is protected or not when the other party immediately asserts this privilege against the forcible evidence-gathering act of the investigative agency at the investigation stage. In particular, although the Federal Rules of Evidence govern both criminal and civil cases, when courts decide whether to protect privileges in criminal procedures, there are cases where the unique characteristics of criminal procedures are considered in comparison to general civil cases.

In France, a country in the continental law system, in addition to the general provisions of the French Attorney-at-Law Act(Loi n° 71-1130 du 31 décembre 1971) on the guarantee of the professional confidentiality of lawyers(le secret professionel des avocats), the individual provisions under the Criminal Procedure Act(Code de procédure pénale) specifically regulate the professional confidentiality of lawyers. When there is a dispute over whether something should be protected as confidential during a search and seizure by an investigative agency, the seizure is temporarily ceased and the court decides whether to protect it so as to make the investigative agency seize documents and objects not subject to confidentiality. Recently, the French Criminal Procedure Act has been amended to further strengthen this protection. Meanwhile, in Germany, the protection of professional confidentiality in compulsory investigations, including seizure against lawyers, is regulated in several ways through the Criminal Procedure Act as an individual law, separate from the general provisions on confidentiality under the German Attorney-at-Law Act(Bundesrechtsa nwaltsordnung).

Based on the comparative legal review, this study suggests the following legislative improvement measures.

First, considering that it might be more appropriate to regulate this issue under individual procedural law, this study proposes a legislative measure made in the form of an amendment to the Criminal Procedure Act instead of the amendment to the Attorney-at-Law Act, which has been commonly adopted by bills submitted to the National Assembly. In particular,

it is considered that the compulsory submission of evidence in the Korean legal system was primarily related to criminal search and seizure rather than civil procedure, where the general evidence discovery system had not yet been introduced.

Second, although criminal seizure against lawyers was often problematic in Korea, the use of Articles 112 and 219 of the current Korean Criminal Procedure Act regarding the right to refuse seizure against a person who relates to the confidentiality of others, including lawyers, was poorly applied. This study proposes an amendment to the Criminal Procedure Act to broaden the object of protection by referring to foreign systems.

Third, in order to obtain relief from breach of confidentiality, this study proposes the procedure devised to dispute the compulsory seizure of evidence itself before the exclusion of evidence at the trial stage. The procedure to decide whether to be protected by professional confidentiality in the case of a dispute as well as the procedure for exercising the right to refuse seizure were specified in the proposed amendment to the Criminal Procedure Act. This study also suggests grounds for contesting the seizure and search by investigative agencies on the spot, as well as the special provisions of the quasi-appeal that allow the procedures to exclude confidential communication from the search and seizure by the ruling of the court.

Fourth, it could be discussed to determine the admissibility of evidence pursuant to Article 308-2 of the Criminal Act at the trial stage in a case where the right to refuse seizure was not exercised at the seizure spot even though the communication with a lawyer could be protected as confidential. With reference to the relevant foreign regulations, this study proposes an amendment to the Criminal Procedure Act to include a separate provision regarding admissibility in that case.

In criminal proceedings, the seizure of confidential communications between lawyers and clients has been controversial. Of course, this needs to be regulated from the point of view of confidentiality. But in order for the guarantee of confidentiality to be effective, the procedure needs to be designed to block the compulsory seizure and submission of evidence in advance before it is presented as evidence at trial. This study emphasizes that this aspect of procedure assurance is particularly important.

As an alternative to or in parallel with the existing discussions conducted in the context of the amendment of the Attorney-at-Law Act, this study is expected to spark several discussions on the revision of individual laws such as the Criminal Procedure Act to enhance the confidentiality of communication between lawyers and clients. Furthermore, it is expected to be used in the future as a useful reference for the interpretation and operation of related systems.

24

A Study on the Particularity of Sexual Violence Crimes and the Jury Instructions in Korean Jury Trial (2022)

Kippeum PARK
Judge Researcher

Crimes are without any regard to victims. The same is also true for sexual violence crimes. Nevertheless, we have various prejudices against sexual violence crimes, especially against victims of the crimes. Concerns are raised that such prejudices may be manifested in Korean Jury Trials for sexual violence crimes. In fact, looking at a comparison of acquittal rates in Korean Jury Trials for violent crimes from 2008 to 2020, the acquittal rate for sexual violence crimes stands significantly high at 21.88% compared with manslaughter at 1.68%, robbery at 8.00%, and bodily injury at 6.24%, suggesting that such concerns are being realized.

Therefore, in the first place this study examines the significance of gender stereotypes and rape myths, and the mutual relationship between them, and further scrutinizes how these prejudices are manifested in reality. Also, it leads to ascertain that public misconceptions about sexual violence crimes, by elucidating the discrepancy between public perceptions of sexual violence crimes and actual sexual violence crimes and the disparities between men and women, and moreover the variance among year-on-year public perceptions.

Then, in order to determine the reason why the ratio of acquittals in Korean Jury Trials for sexual violence crimes is three to nine times higher than that of other violent crimes, this study seeks to identify whether or not the rape myths affect the jury's determination. It also confirms that these rape myths can be corrected through jury education, etc., to be administered by judges, thereby it clarifies that jury instructions are needed for the judge to explain to the jury in Korean Jury Trials.

Accordingly, the study reviews both the U.S. and UK jury instructions to prepare guidelines for judges to give appropriate explanations to the jury in Korean Jury Trials for sexual violence crimes, and based on this analysis, it suggests some guidelines on major concepts and stereotypes that are called into question in Korea.

The establishment of guidelines to ensure that judges explain them to jurors in Korean Jury Trials for sexual violence crimes has been sought by the reflective consideration of unfair deliberations and verdicts presumably influenced by gender stereotypes and rape myths. This aims to correct false prejudices and consequently achieve fair trials. In other words, this is to normalize abnormalities and replace unfairness with fairness, which is ultimately at the realm of the court's duty to secure fair trials.

25

Issues in Judicial Practice under the Serious Accidents Punishment Act (2022)

Hyeun-hee JEONG
Judge Researcher

The Serious Accidents Punishment Act (SAPA) came into effect on January 27, 2022. This report aims to briefly explain the key provisions and issues of the SAPA to assist judicial practice. The Act was enacted based on the premise that it is unreasonable for business owners and responsible managing officers, etc. to avoid punishment for serious industrial or civic accidents merely because they lacked specific supervisory authority. Accordingly, the SAPA imposes concrete duties on responsible managing officers, etc., and if a serious accident occurs due to a violation of these duties, it provides for criminal liability. The Act ultimately aims to prevent industrial and civic accidents by raising awareness and accountability among executives.

The main provisions of the SAPA are as follows:

A business owner or responsible managing officer, etc. shall take measures to prevent hazards or risks to the safety and health of workers in the business or place of business that the business owner, corporation, or institution actually controls, operates, or manages. Where a business owner, corporation, or institution has awarded a contract, outsourced, or entrusted any work to a third party, the business owner or responsible managing officer, etc. shall take the same measures to prevent the third party's workers from suffering a serious industrial accident (Articles 4 and 5).

A business owner or responsible managing officer, etc. shall establish safety and health management systems to protect the lives and physical safety of users or other persons from any defect in the design, manufacture, or management of raw materials or products produced, manufactured, sold, or distributed, or from any defect in the design, installation, or management of public-use facilities or public transportation vehicles (Article 9).

If a serious industrial or civic accident occurs due to a breach of these obligations, the responsible individuals shall be punished by imprisonment, and the corporation or institution shall be punished by a fine (Articles 6, 7, 10, and 11).

Additionally, during judicial proceedings, courts may, ex officio, examine victims as witnesses, and shall designate an expert as a professional examiner to participate in the litigation procedures upon the parties' request, unless there are special circumstances (Article 14). The Act also introduces punitive damages in civil cases, capped at five times the actual damages (Article 15).

The SAPA uses key concepts such as "serious industrial accident," "serious civic

accident," "responsible managing officer, etc.," "worker," and "business or place of business that the business owner, corporation, or institution actually controls, operates, or manages." There are various interpretations of these terms, and they should be construed in light of legislative intent, statutory language, related laws, and the principle of legality. Their application will be further clarified through judicial proceedings.

In summary, the SAPA aims to prevent serious industrial and civic accidents by imposing specific safety and health obligations on responsible managing officers, etc. and ensuring meaningful enforcement. In judicial proceedings, the Act should be applied in a way that preserves its legislative purpose, while also ensuring balanced judgments by considering the specific circumstances of responsible managing officers, etc. who have made genuine efforts to fulfill their obligations.

26

Study on the Court-Mandated Detention Period in the Korean Criminal Justice System (2023)

Yun-sun KIM
Senior Judge Researcher

According to the Korean Criminal Procedure Act, the period of court-mandated detention shall be two months, which may be renewed only twice by a court ruling for each trial level, each time extendible by two months, if continued detention is deemed necessary. However, it may be renewed up to three times if it is unavoidable and necessary for an appellate court to hold an additional hearing upon the request of a criminal defendant or a defense counsel for the examination of the evidence, the submission of a written statement to supplement the cause of appeal, or for any other reason. Other countries rarely have such laws imposing batch restrictions on the length of court-mandated detention periods based on trial levels in all criminal cases. In countries with advanced judicial systems, the detention period is mostly controlled by active utilization of the bail system without limit on the duration of the detention period, or limiting the period of pretrial detention before the trial begins.

The detention period limitation system in Korea was first introduced in the newly enacted criminal procedure law by the Korean lawmakers, who had suffered greatly from being detained for a prolonged period during the Japanese colonial period, in order to overcome the coercive investigations and distrust of the fledgling Korean criminal justice system through a speedy trial after the liberation from Japan. For about seventy years since then, such a system has played a role in promoting speedy trials and preventing defendants from being detained for extended periods. However, rapid social changes and developments in modern times are resulting in a variety of new crimes, and in light of these, there is a push for reinforcing oral hearings as the call for a court-oriented trial system is growing louder than ever. The fact of the matter is that the principle of intensive examination in a criminal trial is difficult to establish, and the detention period limitation system is revealing its own limits by making proper discoveries difficult to be carried out while having the effects of actually restricting defendants' rights to advocate for and defend themselves.

This report provides an overview of the detention and bail systems in Korea and examines the background for the implementation of the detention period limitation system. This report also investigates the detention and bail systems in the U.S., England, Germany, France, and Japan. The report then analyzes the status of the criminal trial operations in Korea through criminal justice statistical data and looks at the recent changes taking place in the criminal trial environment. Through surveys and personal interviews, the report investigates judges' and lawyers' perceptions of the actual criminal trial procedure and

detention period limitation system. This report further explores the limits of the current detention period limitation system and then suggests plans for improvement to overcome these identified limitations.

According to statistics from criminal trials over the last ten years, both the prosecution and appeal rates of people in custody have decreased, and thus, trials without detention have expanded. However, the accused's bail request rate remains low, and the bail rate in the first trial is gradually declining, indicating that the bail system as a whole is underutilized. With the push to establish a more trial-centric system for handling criminal cases, the average processing time for criminal cases has continued to rise, and due to the existence of the detention period limitation system, judicial resources have been allocated more on custodial cases, causing the average processing period for non-custodial cases to rise significantly.

According to the interviews with judges and lawyers on the issue of the detention period limitation, it appeared that general detention cases did not face many difficulties in completing trials within the limited detention period; however, it was much more difficult to complete trials within the allowed detention period for those cases fraught with many issues and requiring examination of a large number of witnesses. In those cases, the criminal court would release the accused on bail when the detention period was about to expire, and the court, in its desire and attempt to complete the hearing within the detention period, would often end up taking a passive and half-hearted approach to accepting the defendant's requests for evidence. A survey of judges and lawyers also revealed that the Criminal Procedure Act's intensive examination was not being carried out in actual criminal trials, and both judges and lawyers agreed that the current detention period limitation system needs to be relaxed. To mitigate the intended negative effects of the detention period limitation, most judges preferred to extend the detention period to the maximum allowed. The preference of the lawyers for methods of maximum detention period extension and exceptional detention period extension was similar.

The current detention period limitation system in Korea shows its limits in that it can actually restrict diligent investigations of factual evidence and the defendants' rights to attack and defend themselves once the trial commences. In order to conduct proper criminal trial procedures with flexibility that would be more fitting and accommodating for individual cases, it would be most desirable not to limit the period of detention after the trial commences in court. The reality, however, is that implementing intensive examination in criminal cases is quite difficult, and the average processing time of criminal cases is continuing to rise. Therefore, it would be more realistic and pragmatic to maintain the current detention period limitation system while easing its strictness and rigidity. This report recommends that the current detention period limit system be maintained while also proposing an amendment to the Criminal Procedure Act to implement plans to extend the maximum detention period for the first trial and appeal trial by up to a year for thoses cases with exceptional circumstances. This report further proposes implementing a conditional bail system when issuing detention warrants and bringing uniformity to those various release

procedures. This report also includes plans for improving the efficiency of criminal trials.

There is no doubt that detentions must be conducted carefully because they not only cause individuals pain and suffering that is difficult to recover from, but they also have the real effects of greatly limiting the accused's rights to attack and defend themselves during the investigation and trial. The detention period limitation has served as an effective means to prevent unreasonable prolongation of detention in the past, but its limits have now been clearly exposed. Therefore, in the interest of weighing the balance between the public interest of realizing the state's right for punishment and the individuals' interest in avoiding infringement on personal freedom, the time has come now to thoroughly evaluate the need to implement a more flexible detention period limitation system that fits the reality of our current criminal trials. It is time to think about introducing an alternative to the detention system and a release system to expand trials without detention.

27

Innovation or Manipulation? A Study of the Circumvention of the Law (2023)

- Focused on the Interpretation of Administrative Criminal Law -

Boram HONG
Professional Researcher

This study delves into the question of circumvention of the law and the borderline cases of lawful business. Circumvention of the law is an age-old wicked problem and has vexed the minds of legal theorists and practitioners for centuries. When a newly emerging business makes an appearance, the question of whether current economic regulations should be applied to it often becomes the center of social controversy. New entrepreneurs would assert that their businesses are "innovative" and fall outside of the scope of regulations, and thus creativity and entrepreneurship freedom should be guaranteed. The authorities and business competitors, however, would insist that all similar businesses should be treated equally and be subject to the same regulatory burdens, saying that legal compliance plays an important role in maintaining social order and values.

When the new business owners deny that their businesses locate within the scope of a regulation, should this denial be understood as an attempt to bypass the law, or just a lawful right of entrepreneurship? We can find many borderline cases sitting on the grey fuzzy line between a legal business and illegal deviance. The new business entrepreneur does not always follow traditional business practices, nor does the business always take a form typically described in the law. There is no direct violation of law, because the dictates of written rules do not fully cover new practices. The purpose of law and possible social consequences, however, call for attention to its substantial context.

Addressing this problem depends on giving which of the form or substance more priority. When a new business is judged to be innovative and free from current regulations, it is a case of paying more attention to its form. On the other hand, if you pay more attention to the substance of a new business, the new business owners must also comply with the obligations and prohibitions included in the regulations. As such, the judgment of new business depends on whether we value formal legality or substantial illegality of the relevant law. This topic of form and substance belongs to the circumvention of the law which has been discussed since Roman times and can be best dealt with using two responses: legal reasoning and legislation. The judicial response toward circumvention of the law is interpretation and analogy. Oftentimes legal loopholes can be addressed by proper legal interpretation. In other cases, circumvention cases can be decided via analogical approach. But some certain cases do require definite legislative responses. When the legal order cannot be established by means of interpretation or analogical reasoning, only legislative responses can solve the circumvention problem.

But abstract discussions alone cannot provide practical answers for particular cases that have their own characteristics, and relevant factors to be considered for each case are quite different. Thus inquiries into circumvention of the law dissolve into casuistry. This study, in this regard, tries to provide empirical implications with an abundance of empirical cases. Analyzing specific issues of a new business can deepen our understanding of this issue. The platform industry can provide good references for understanding circumvention of the law, for the conflicts between form and substance become quite tense in the platform business. Therefore, this paper analyzes the attributes of the new platform business, examining examples of legislation of other countries with notable litigation cases. Similar cases and controversies are likely to appear in our society in the foreseeable future, and some have already occurred.

A comprehensive approach is requested to discuss the topic of circumvention of the law. The integrity of the judgment can be ensured when we understand the policy perspective of regulations. Policy factors can be considered as a reference in the process of making a comprehensive judgment when the statutory directive is uncertain or ambiguous. In this context, this paper examines the types of regulatory policies and recent trends. However, these contents are only secondary reference factors for judgment, and the primary criteria for judgment are, above all, what the relevant laws and regulations dictate.

The judgment of the new business draws the starkest distinction in criminal trials. Due to the numerous obligations imposed by modern administrative laws, a new business may even face the probable consequence of criminal punishment when it is judged to not comply with regulations. In order to ensure the effectiveness of regulation policy, most regulatory statutes have provisions for criminal punishment in the case of violating administrative duty. In terms of criminal law, more legal clarity should be required in the interpretation. Because criminal law is the last resort to establish legal order, the basic principles of criminal law interpretation must be followed. In addition, considering the nature of the deviation or violation, the applicability of administrative criminal rules should be approached with more prudence. Although the legality of the business could be questioned, there is room for doubt about the blameworthiness of the business owners. It is hard to criticize them as morally reprehensible; they may infringe legal rules but those behaviors rarely consist of atrocious, anti-social crimes.

Textualism in interpretation ensures stability in the legal system. In terms of legal predictability and social trust, the regulatory authority should follow the principle of strict interpretation. Recent policy trends emphasizing ex-post regulation rather than ex-ante regulation is also worthy of reference. Regulations, especially in the form of entry regulations, restrict the freedom of citizens. When a new business falls outside the scope of regulations, there may arise concerns about problems from regulatory gaps and time-lags. And exclusion from the application could cause a risk of a repeated flouting of the legislation. However, it should be noted that even when the necessity of regulation is highly recognized in the society, we should ask whether judicial response is necessary and

justifiable. Legislative alternatives are more recommendable in most cases. In light of the separation of power and deference to the legislative authority, courts should exert judicial discretion with prudence. In this sense, it would be reasonable to acknowledge a new business as an innovation if circumstances allow.

It is hard to find one over-all solution in regards to circumvention of the law, because the court must decide case by case. To avoid over-simplification, the applicability of regulation should be weighed in each case differently. There exists a penumbra of doubt in every case, and the uncertainty around this issue could not be overlooked. When more and more cases are accumulated, however, it will be possible to establish a more refined and detailed theory.

28

Improvement Measures for Custody and Management of Seized articles by Courts (2023)

Kyongsun KWON
Judge Researcher

Although the relevant statute prescribes cases where courts must keep, manage, and even dispose of seized articles in criminal procedure, there exists not much interest inside or outside the court regarding the custody, management, and disposition of seized articles. Only two provisions of the Processing Rule of Court Trial Affairs have been in force concerning the custody and management of seized articles in the criminal trial procedure, applying in the cases where the court keeps and manages seized articles, only in limited cases in practice. And whereas in juvenile protection cases, where the statute prescribes that the investigative agency sends the seized articles to the court along with the record, more detailed regulations have been provided under the Supreme Court's Practice Manual on the Disposition of Seized and Confiscated articles, etc. in Juvenile Protection Cases, but as a matter of practice these are also not sufficient. Those factors such as the lack of interest in the custody and management of seized articles by the courts, combined with insufficient regulations and non-manageability of the seized articles through an electronic system, have resulted in a shortage of systematic and stable management of its custody, management, and eventual disposition by the courts, and have led to the neglect of seized articles in juvenile protection, family protection, and child protection cases.

A more fundamental problem is that although the Criminal Procedure Act does not clearly prescribe the scope of the court's custody, management, and disposition of seized articles in criminal trial procedure, the custody and management of seized articles is in effect, carried out in practice without much discussion thereon. This research report examines which subject, the court or the investigative agency, is responsible for the custody and management before closure of a case in criminal trial procedure, and it deems that seized articles taken by the investigative agency shall be held in custody and managed by such investigative agency and seized articles taken by the court shall be held in custody and managed by the court. On the other hand, the right to dispose of seized articles was considered to be from the time the seizure report was filed in the case of articles seized by the investigative agency, and after the seizure in the case of articles seized by the court. Next, this report suggests that the subject responsible for the execution of judgement after the case has been completed shall be the prosecutor in the case of all seizures made by the investigative agency, whereas in the case of seizures made by the court, the prosecutor decides on disposition of the seized articles according to the written judgment. In cases where no pronouncement is made in the written judgement on confiscation or return to the

victim, thus the seizure is deemed to be lifted and the seized articles is returned, this report regards that the court shall be the subject of judgement execution.

Based upon the above-mentioned examinations, this report proposes a draft as to Processing Rule of Seized Articles Affairs as a way to improve the custody and management of seized articles by the court. In other words, A single encompassing regulation rule is to be stipulated for the custody, management, and disposition of seized articles by the court in the form of a Supreme Court's Rule, including criminal trials, evidence preservation, juvenile protection, family protection, and child protection cases. However, regarding evidence preservation cases that are distinguished from criminal trial procedure in terms of the custody and management of seized articles, such as when the case at hand is not prosecuted after evidence preservation or when the seized articles are not used even if the case at hand is prosecuted, and as regards juvenile protection, family protection, and child protection cases, in which the court must take over the seized articles along with records from the investigative agency and make the final disposition of all seized articles, including confiscated articles, a separate chapter within the above Processing Rule shall be provided in a bid to set out special regulations concerning parts specific to each procedure.

Furthermore, along with the provision of regulations, physical facilities such as a place for custody of seized articles and safes with locks, and human resources for custody and management of seized articles need to be supplemented. In addition, an electronic system is required to systematically manage seized articles. Specifically, it is necessary to be able to identify the existence of seized articles in a specific case and where and in what state it is currently held in custody, further to ensure that the person in charge of the seized articles is notified when a judgement or decision becomes final and conclusive, and finally to provide a computerized overview of the types and quantities of seized articles currently in custody. In juvenile protection, family protection, and child protection cases and in evidence preservation cases, communication should also be conducted between the investigative agency and the court. By establishing human resources and physical facilities for the custody and management of seized articles in accordance with specific regulations, through managing seized articles in a systemic manner, and by conducting inspections in a regular and continuous basis, seized articles can serve its functions as evidence or as objects of confiscation, and ultimately the property rights of the public can also be guaranteed.

29

The Assessment of Recidivism Risk as a Factor in Suspended Sentences (2023)

Miyon KWON
Judge Researcher

This study aims to identify the criteria that should be used to assess the risk of recidivism and how the risk of recidivism should be reviewed in deciding whether to suspend a prison sentence, and to provide recommendations for improvements. For these purposes, the study focuses on three subjects: the meaning of recidivism in suspended sentences, the method of incorporating risk assessment into sentencing guidelines, and examining factors which influence sentencing.

The aforementioned aspects are considered in the first part of the study as it reviews the current state of Korean legal system. Although the Korean Criminal Act does not explicitly state the goals of sentencing, a sentence must consider its purpose of crime prevention being in proportion to the offender's degree of responsibility in accordance with Article 51 of the Criminal Act, Article 81-6 (2) of the Court Organization Act, and precedents established by the Supreme Court. Moreover, the risk of recidivism serves as an important criterion for suspended sentence, as suspended sentence reflects the perspective of rehabilitation purpose. Sentencing guidelines in South Korea provides conditions of suspended sentences according to the type of offense, but the guidelines have not yet been systematized around the risk of recidivism for various reasons. Also, while pre-sentence investigations are not generally conducted, judges still decide the sentence after reviewing only the evidence presented by the parties concerned in the case. To entrench fairness and objectivity in sentencing, the sentencing system needs to be improved.

In order to propose recommendations for the improvement, this study has conducted comparative legal research. In the United States and England and Wales, risk assessment tools, developed based on empirical studies, are widely used in criminal procedures. Particularly, in sentencing hearings, risk assessment tools are used in pre-sentence investigations, and based on the results, judges impose sentences appropriate for the defendant's liability and rehabilitation. On the other hand, risk assessment tools are not being used in Germany and France. In Germany, Article 56 of the Penal Code prescribes the substantive requirements for suspended sentences depending on the prison term, and precedent cases on sentencing issues provides criteria related to the risk of recidivism. In France, according to the principle of individualized sentences, which is based on the New Social Defense Doctrine, individualized justice focused on rehabilitation is being emphasized. As it is in Germany, the criteria related to the risk of recidivism are also determined by precedent cases in France. It is notable that all four countries run investigation

systems that help the court understand the individual and the circumstances of the offense to determine an appropriate sentence.

Risk assessment tools used in the U.S. and England extract several factors related to recidivism (e.g., gender, age, criminal record, education level, etc.) based on criminal psychology, statistics, sociology, etc., and classify offenders through structured professional judgment or actuarial risk assessment. The risk assessment tools are positively evaluated in that they reduce recidivism by providing individualized rehabilitation programs for each criminal defendant, systematize sentencing decisions related to the risk of recidivism, and realize evidence-based sentencing. On the other hand, several problems have been pointed out, such as that while the accuracy of the tools is not remarkably high, bias appears due to the use of race and gender as risk assessment factors, and that since artificial intelligence algorithm-based tools are currently impossible to verify, there is a risk of violating due process principle. Since such tools were introduced as part of the correctional policy from the utilitarian point of view, they do not conform to the Korean legal system which strictly distinguishes between punishment and measures for rehabilitation, and between court sentencing and correctional systems. Also, as the trade-off between accuracy and fairness has not been resolved and no risk assessment tools are available to support sentencing in Korea, it is currently not appropriate to introduce risk assessment tools directly into the sentencing hearing process.

However, since each factor in the risk assessment tools is an element which has a high correlation with recidivism recognized through empirical researches, it is still possible to extract the risk factors that do not conflict with other normative values, such as the principle of liability and equality, and reflect them in the guidelines. Accordingly, this study reviews each risk factor of the risk assessment tools developed or used in Korea to propose a revision to the guidelines. In the guideline on general crimes, "records of juvenile detentions indicating the criminal tendency of the accused" should be added as a criterion. "Alcoholism" should function as a criterion only in violent crimes, and "drug addiction" only in drug-related crimes. Also, the study proposes creating new definitions of "alcoholism or drug addiction" and "social relationship". With regard to sexual offenses, "cases where the offenders were under the age of 20 when committing their first sexual offense and are currently under the age of 25 (for sexual offenses against children under the age of 13)" and "cases where there are two or more unknown victims, including this crime" are proposed to be added as criteria, and the criterion of "previous convictions for similar offences" to be amended to "previous convictions for similar offences and for violent crimes". In addition, a pre-sentence investigation is needed for certain factors, such as "problematic behavior shown during the supervision period", "antisocial tendencies", "alcoholic or drug addiction", and "social relationship". And separate guidelines for suspended sentence for sex offenses against children should be developed, as sex offenses against children have different characteristics from those against adults.

In order to properly apply the criteria that reflect the risk of recidivism in trial practices,

pre-sentence investigations should be conducted generally by court investigators. Among the recently proposed amendments to the Criminal Procedure Act regarding pre-sentence investigations, the provision limiting the range of cases should be removed, but the rest of the proposed amendments needs to be passed quickly. In the long term, researches to develop risk assessment tools for sentencing, training courses on the use of tools for court investigators and on the interpretation of assessment results for judges are also necessary. For sentencing hearings, the study suggests, ① pre-sentence investigation orders, the starting point of sentencing hearings, to be 'general investigation orders' based on sentencing guidelines, ② delays in cases due to sentencing hearings be minimized by using the sentencing guidelines table, and ③ computerized pre-sentence reports be utilized to make it easier for judges to provide detailed reasons for the sentence imposed.

This study is meaningful as a preliminary research on how to reflect the risk of recidivism, to which little attention has been paid so far, in sentencing guidelines and sentencing hearings. Based on this study, it is hoped that further research and discussions on the risk of recidivism be continued in the overall discussion of the criminal procedure.

30

Criminal Jury System in France (2023)

Woo Kyung PARK
Professional Researcher

Fifteen years after the introduction of the "citizen participation in criminal trials" (hereinafter referred to as "jury trials") in 2008 with the aim of ensuring public participation in the judiciary and resolving judicial distrust, there is now a consensus on the need to improve the system. In particular, the number of completed cases relative to the number of registered cases has been gradually declining since the mid-2010s, raising the need to strengthen the system. At the same time, some have pointed out the constraints of expanding the scope and scale of jury trials under current conditions, while others have emphasized the constraints imposed by the Constitution, which stipulates the right to be tried by a judge.

With these issues in mind, this study examines the French jury system, which has been relatively unexplored, from the perspective of a comparative case study as a way to deepen the debate. Korean jury system is characterized as a mix of the Anglo-American jury system and the continental European lay assessor system. The French system shares similarities with Korean system in that the role of the judge in jury trials is relatively greater than that in jury trials in common law countries, and in that the judge and jury make decisions at the guilt and punishment phase, although judges are not bound by the jury's verdict in Korean system. The purpose of this study is to examine the origins, history, structure, and current status of the French jury system, as well as recent changes, in order to find implications for improving Korean jury system.

France was the first continental country to introduce the English jury trial system, which had been practiced since the 13th century. The legal basis for jury trial was established in 1791, shortly after the French Revolution. The premise was that trials should be conducted in the name of the French people by the representatives of the French people. Initially, both indictment and verdict juries were introduced, but soon only verdict juries were in practice. The indictment jury system was replaced by the investigating judge (*le juge d'instruction*) system and felony courts (*Cour d'assises*) were established. At the time, Cour d'assises consisted of three judges and 12 jurors. If the defendant was found guilty, the judge decided what sentence to impose. The two-tiered system, in which juries find guilt and judges sentence, changed in response to criticism on jury acquittals and the practice of correctionalization (*la correctionnalisation d'un crime*). The number of juries was reduced and jurors were now deliberating alongside judges. Although these changes were in line with the decline of the jury system in European countries in the early 20th century, France, unlike other countries, tried to maintain its original intent by increasing the number of jurors in

1958.

The changes since the 2000s represent a response to the problems that have emerged since the jury system was framed. The changes are notable for two reasons: guaranteeing the right to a fair trial and improving efficiency in criminal court proceedings. In 2000, appeals against decisions handed down at first instance by *Cour d'assises* became available, and in 2011, *Cour d'assises* decisions were required to give reasons. The changes in 2019 were more extensive, with the establishment and piloting of criminal courts (*Cours criminelles départementales*), which was generalized in 2023 to deal with cases involving crimes with maximum sentences of between 15 to 20 years in prison. While a consistent assessment of these changes has yet to be made, it is difficult to evaluate recent changes simply as a reduction of the jury system.

The nature of the changes in the French jury trial system needs to be examined in the context of assessing the relative level of change. In this perspective, it is difficult to characterize the French jury trial reform as a 'success' or a 'failure'. Recent changes can be assessed as an attempt to refine the conditions of citizen participation in order to make the meaning of a jury verdict clearer. However, it is also true that there are conditions that make it difficult to expand the practice of the jury system in terms of procedures and costs of criminal trials, and that it is not easy to implement alternatives to it. In the end, to narrow the gap between normativism and realism, it is necessary to look at the experience of implementing a system in order to create a detailed system. The French case can be seen as an attempt to reinterpret the ideology of the supremacy of juries over judges and the principle of people's participation to reflect changing times and social contexts, and to find mechanisms to realize it. The principle of people's participation itself has never been denied in the waves of changes. That is the most important implication which can be drawn from the review of the French case.

31

A Study on the Principle of Written Indictment Only (2024)

Chong Kun KIM
Senior Judge Researcher

Article 254, paragraphs (1) and (3) of the Criminal Procedure Act specify that the initiation of public prosecution involves submitting a written indictment to a competent court. The written indictment must include the names of the defendants and details enabling to ascertain their identification, the name of the crime, the factual basis for the charged crime, and the relevant legal provisions. Section 118, paragraph (2) of the Regulations on Criminal Procedure further states that, except for documents outlined in Section 118, paragraph (1), no additional materials that may lead the court to form preconceptions about the case should be appended to the indictment, and their contents should not be quoted. Both criminal procedure commentators and courts assert that it is impermissible to include superfluous information in the indictment that could possibly create preconceptions. This overall approach is commonly referred to as the principle of written indictment only.

The principle of written indictment only aims to prevent the court from forming a biased view of the defendant's guilt based on information not presented during the trial.

This study investigated the application of this principle in Korea, expounding that the Supreme Court en banc held a prosecution violating the principle of written indictment only to be deemed invalid. However, it observed that if the defendant raises no objection during the trial, and the judge reaches at forming a conviction concluding the evidence-gathering process, the defendant cannot subsequently claim such a violation.

Furthermore, the study addressed a lack of specific guidance from the Supreme Court on remedying defects in violation of the principle of written indictment only. It suggested that the court should take corrective measures in the early stages of criminal proceedings, such as exercising its right to seek clarification from the prosecutor or mandating the removal of the relevant information from the written indictment.

In conclusion, several issues in applying the principle of written indictment only in Korea were identified and pointed out elaborately. The study recommends legislative reforms attempting to revise the Criminal Procedure Act to provide clarity on the principle's application and calls on courts to build a body of precedents that can serve as a guidance in its application.

32

Research on the Issues in Judicial Practice regarding Stalking Crime (2024)

Nara HAN
Judge Researcher

The enactment of the Act on Punishment of the Crime of Stalking (the Stalking Punishment Act) in October 2021, followed by its amendment in July 2023, has resulted in a substantial increase in the volume of criminal trials, ex post facto approval for urgent emergency measures, and provisional measures cases of the Stalking Punishment Act handled by the court. This has led to the accumulation of related issues and practical know-hows. This report provides a comprehensive research on the principal legal issues that have arisen in the judiciary's practical application of the Stalking Punishment Act. This report aims to serve as a valuable resource for judiciary practice and proposes avenues for legislative enhancement.

Initially, the report provides an overview of stalking's distinctive characteristics and delineates the key provisions of the Stalking Punishment Act. Subsequently, it methodically examines the judiciary's handling of related cases through an analytical scrutiny from different perspectives, encompassing both statistical data and written judgments interpretations.

Through comparative legal research, the report examines the anti-stalking laws of the United States, the United Kingdom, Germany, and Japan, which had criminalized stalking before Korea did. It analyzes their interpretations of laws and judicial cases to be of help to interpret the Stalking Punishment Act and proposes directions for its improvement. Specifically, the report includes a detailed examination of 18 U.S.C § 2261A, the Model Anti-Stalking Code, and California's Penal Code § 646.9 in the United States. It also explores the Protection from Harassment Act 1997 and the Stalking Protection Act 2019 in the United Kingdom. Both the US and the UK conceptualize stalking within the general concept of a 'course of conduct'. The Model Anti-Stalking Code sets a benchmark for effective legislative and interpretative approaches, and the UK's Stalking Protection Orders and Restraining Orders provide comprehensive protection to victims through a wide range of court orders. The German Criminal Code (StGB) § 238 and the Law on Civil Law Protection against Acts of Violence and Stalking (Gewaltschutzgesetz), along with Japan's Anti-Stalking Act and its various case laws applying it, are also reviewed. In light of the similarities between relevant German and Japanese laws and the Stalking Punishment Act, discussions, interpretations, and considerations regarding the actus reus, concurrent offenses, and other issues related to stalking in Germany and Japan hold significant importance for our practical application, as they can be referenced in our professional practice.

In the section on issues related to offenses under the Stalking Punishment Act, the report categorically typifies and extensively discusses various types of cases managed under judicial practice as regards to each element of the stalking crime, namely elements determining whether the act falls under Article 2(1), whether the act was committed against the other person's will, without good reason, causing anxiety or fear, being repeated or continuing and the mens rea, and a crime of failure to comply with a provisional measure, etc. The report also addresses issues related to concurrent offenses associated with stalking, as well as orders to attend an education program and related challenges. For the provisional measures aspect, the report first of all provides examples of the conclusion and reasons of the court ruling. It then proceeds to analyze both the procedural prerequisites and substantive issues that frequently emerge, with a particular focus on conducting hearings and assessing the 'necessary' requirement for a detention order.

The report reaches the conclusion by proposing a series of reformative measures. These encompass the incorporation of additional stalking behavior patterns into the Stalking Punishment Act, the expansion of protected individuals to include those in intimate relationships, the imposition of encreased penalties under specific circumstances, and the emphasis on the necessity of a mandatory education order. The report suggests proactively deploying electronic monitoring devices as a strategy to enhance the efficacy of provisional measures. It advocates the inclusion of a prohibiting order proscribing contact by post as urgent emergency measures and provisional measures. In addition, the report recommends the introduction of novel provisional measures, such as attending counseling programs for stalkers, and prohibiting the use of the victim's data via information and communications networks. Furthermore, it highlights the need for legislative amendments enabling victims to request extensions of the provisional measures period, the inclusion of pre-trial detention days in the principal punishment by provisional measures, the facilitation of the issuance of custody warrants for hearings, and granting lower courts the authority to render decisions in the appellate cases.

33

Study on the Current Status and Operational Strategies of Criminal Retrials (2024)

Kyongsun KWON
Judge Researcher

Between 2002 and 2022, approximately 24,000 individuals had sought criminal retrials, resulting in an outcome where half faced dismissal of their retrial applications, while approximately 4,400 individuals were exonerated by 'not guilty' verdicts. Among these applications, past affairs cases (cases of historical significance) accounted for roughly 8.3%, with the remaining 91.7% evenly divided between general cases and reopening cases resulted from unconstitutionality decisions by the Constitutional Court. South Korea's criminal retrials can be categorized into three principal types: retrials upon past affairs, retrials based on unconstitutionality decisions, and general retrials, each having distinct characteristics and attributes.

Primarily, retrials predicated on unconstitutionality decisions under the Constitutional Court Act, demonstrate significant variance in application numbers and acquittal rates contingent upon whether such decisions were made and what penalty provisions were declared unconstitutional. While these retrials shall be recognized more clearly in terms of grounds for retrial compared with other types, challenges persist regarding the retroactive effect limitation under Article 47, Paragraph 3 of the Constitutional Court Act, the extent of recognizing unconstitutionality decisions as retrial grounds, and issues surrounding trial premises.

Secondarily, retrials upon past affairs stemming from South Korea's historical context, such as authoritarian regimes, illustrate unique features, including prolonged ineligibility for retrial and evidentiary difficulties on proving the grounds for retrial. Through legislative enactments, committee formations, and the broadening of retrial grounds via these committees' activities, on the spur of courts and the constitutional court, in parallel with the prosecution's initiative application for retrials and committees under the Ministry of Justice and the Supreme Prosecutors' Office, retrials for past affairs cases have undergone progressive expansion. Consequently, the initiation rate for past affairs retrials significantly exceeds those of other types, with commensurately high acquittal rates in retrial proceedings. Moreover, retrials of past affairs cases would be typically acknowledged with respect to retrial grounds under Article 420, Item 7 of the Criminal Procedure Act.

Save for the aforementioned types, general retrials constitute the most archetypal and persistently occurring type. Characterized by diverse convictions and multifarious retrial grounds, general retrials have seen a notable surge in application rates, showing active utilization, with the increase in number from 230 in 2002, 583 in 2009, 827 in 2015, to

1,142 in 2022. However, despite this apparent surge, out of a total of 11,009 general retrial cases during this period, 8,436 faced retrial application dismissals, with only 524 individuals acquitted following post-retrial commencement decisions. With due consideration to withdrawn retrial applications, out of 10 cases filed for criminal retrials, 8 faced retrial application dismissals, while approximately 1 out of 4 retrial commencement decisions resulted in acquittal or other favorable outcomes.

The underlying causes of these occurrences arise from strict interpretations of Article 420 of the Criminal Procedure Act concerning retrial grounds, passive utilization of fact-finding inquiries during retrial commencement procedures, and the burden on unrepresented retrial applicants to substantiate retrial grounds without the help of appointed defense counsel. Even for legal professionals or investigative agencies, and notably for individuals currently serving sentences in prison, proving retrial grounds encounters formidable challenges. Compounding these challenges are issues such as the disposal of records and evidence, and the time elapsed until retrial commencement decisions, further impeding the retrieval of such decisions. Consequently, while obtaining retrial commencement decisions remains arduous, operating the criminal retrial system with an anticipation of high acquittal probabilities upon obtaining such decisions renders the system inherently flawed, failing to safeguard innocent individuals against unjust punishments and rendering the distinction between retrial commencement and trial procedures under the Criminal Procedure Act virtually meaningless.

Hence, there exists a necessity to broaden the parameters delineating admissible grounds for retrial and to facilitate the issuance of retrial commencement decisions through the mitigating interpretation of Article 420 of the Criminal Procedure Act. Particularly, this entails a relaxation in the construction of Article 420, Item 5, which prescribes the novelty and clarity of evidence, Article 420, Item 2, which addresses retrial grounds arising from the falsification of evidence employed in a final judgment, and Article 422, which regulates the substitution of final judgments as proof of such offence with newly discovered evidence. In contrast to the current paradigm, Japan, stipulating a provision akin to Article 420, Item 5 of the Criminal Procedure Act, adopts a broader interpretation by considering the clarity of evidence as a means to have reasonable doubt concerning the factual findings of a final judgment, deeming it adequate if there exists a high or substantial likelihood of impugning the established acknowledgment. Similarly, France and Germany espouse wider interpretations concerning novel evidence relatively to South Korea, as they do not weigh whether the defendant was cognizant of such evidence, unlike the stance adopted by South Korea, which necessitates broader acknowledgment cognition from the defendant. Moreover, compared to South Korea, France and Germany employ judicial discretion more actively in ascertaining the presence of retrial grounds, and judiciously utilize mechanisms for suspension of sentence enforcement to facilitate evidence procurement conducive to the defendant's retrial grounds, thereby safeguarding the right to defense.

From a legislative standpoint, it is imperative to ensure the appointment of state-

appointed defense counsel during retrial commencement procedures in cases where the retrial application exempts from palpable groundlessness and the defendant has not retained legal representation, thereby enabling access to legal counsel. Additionally, in cases where retrial is sought by contending that the criminal stipulation applied in the conviction, devoid of a declaration of unconstitutionality concerning the penalty provision, is unconstitutional, it is paramount to acknowledge the foundational premise of the trial, thereby affording the opportunity for retrial applications predicated on a declaration of unconstitutionality regarding the penalty provision by the Constitutional Court.

Moreover, in light of the dual procedure inherent within the criminal retrial system, characterized by the segregation of retrial commencement procedures and retrial adjudication procedures, wherein retrial commencement decisions are rendered subsequent to the identification of retrial grounds during the commencement phase, there arises an imperative to administer the system in a manner that mitigates undue delays in securing retrial commencement decisions. Accordingly, when appeals or re-appeals against prosecution's retrial commencement determinations ensue, it becomes imperative to expeditiously adjudicate the validity of retrial commencement through the court's retrial adjudication procedures. Given the propensity for the destruction of records and evidence in numerous retrial instances, it is unfair to attribute this solely to the detriment of the retrial applicant, thereby necessitating the exploration of remedies for such situations. Furthermore, with respect to instances wherein acquittal verdicts are issued in retrials sans corresponding compensation, legislative remedies, such as the enactment of special statutes, are to be warranted.

The extended incarceration of individuals for durations exceeding ten years predicated on erroneous convictions, culminating in acquittals by spending two to three decades post-sentencing for retrial-eligible verdicts, is untenable. Equally unacceptable is the denial of retrial commencement decisions due to the arduousness in substantiating retrial grounds or the disposal of pertinent records and evidence. Furthermore, the endurance of repeated retrial applications, extending to second, third, or even fourth attempts, prior to attaining retrial commencement decisions, or dependence solely on improbable circumstances such as confessions from actual perpetrators to possibly secure acquittals in retrials, is likewise unacceptable. Even in instances of culpability, individuals ought to be afforded the opportunity to substantiate the acknowledgment of retrial grounds, procure retrial commencement decisions, and present any misconduct during retrial adjudication proceedings, provided they have not been afforded a fair investigation and trial consistent with due process. By adhering to such procedural norms within the criminal retrial framework, the likelihood of wrongful punishment inflicted upon innocent individuals diminishes, enabling wrongfully convicted persons to reclaim their integrity and seek redress for incurred damages, thereby ensuring the proper adherence to legal procedures within criminal proceedings. Such assurances foster a sense of tranquility and engender trust in the efficacy of the criminal justice system among the populace.

34

Research on the Current Status and Revitalization of Citizen Participation Trials (2024)

- Focusing on Improving Implementation Requirements -

Sungmin LIM
Judge Researcher

In 2007, South Korea introduced the Citizen Participation Trial system, which allows citizens to participate in criminal proceedings as jurors, as a judicial reform to democratize and progress the judiciary. The system seemed well implemented initially but has been gradually losing momentum and experiencing a long period of stagnation since 2018. Furthermore, as trial delays have recently been a social problem, attention to the Citizen Participation Trial system has decreased.

There are many reasons for the stagnation of citizen participation trials. However, this research found that the fundamental issue lies in the scarcity of cases for citizen participation trials because of the necessity for defendant consent, the judiciary's extensive authority to exclude cases, the burdensome workload associated with citizen participation in trials, and various practical limitations.

Hereafter, this research endeavors to scrutinize the challenges of citizen participation trials in many aspects based on implementation experiences, find insights from a comparative study on leading nations, reconsider the necessity of invigorating citizen participation trials and the direction of the system, and then suggest the way to improve the system mainly focus on refining the implement requirements.

This research starts by introducing the citizen participation trial mechanism in South Korea, including the system's attributes, history, and primary elements. The citizen participation trial mechanism was established as a conjunction of jury trial and lay judge system, as an experimental and conciliatory model, but has yet to be codified into a definitive legal framework.

Subsequently, this research analyzed the problems and underlying factors of citizen participation trials based on 15 years of statistical data, court practices, and opinions from interviews and surveys. In essence, lack of social awareness and doubt of effectiveness have resulted in participants' low engagement and high disengagement rates. Additionally, the system's demanding workload and human and material resource constraints have culminated in a significant frequency of case exclusions. Moreover, the practice of one-day trials and high acquittal rates have contributed to a high appeal rate.

To gain insight, this research then reviewed citizen participation trials in other countries, such as the United Kingdom, the United States, Germany, France, and Japan. The review includes details of the system and implementation situation. The systems across these nations

could be classified into jury models or lay judge models, and each country has variously adopted systems regarding their legal circumstances, like individual legal frameworks, historical contexts, and cultural backgrounds. Despite this variety, these nations generally bifurcate criminal procedures for minor and severe offenses; severe offenses are addressed through criminal procedures by participating citizens, while minor offenses are rapidly dealt with through summary criminal procedures. Also, it was common that provided the case qualifies to implement a jury or lay judge system, the option for the defendant or discretion of the court is considerably limited.

Subsequently, this research examined the imperative of invigorating citizen participation trials and the direction of the system. Considering the accumulated experience of the last 15 years, it is ascertainable that these trials have effectively fulfilled their objectives, encompassing the enhancement of the judiciary's democratic legitimacy and trustworthiness, the realization of substantive, court-led, and transparent legal proceedings, the incorporation of societal norms, and the elevation of publish legal consciousness and education. Consequently, strategies for increasing the number of citizen participation trials are requested. However, any proposed enhancements must adhere to constitutional principles as much as possible.

In this view, this research addressed sequentially the institutional, procedural, and operational improvement measures of citizen participation trials. Initially, in the institutional strategies, this research starts with improving the exclusion system, establishing specialized courts, and amplifying incentives, the way the judiciary could attempt to bring minimal changes in the remaining system. This research categorized exclusionary factors by analyzing the court's decision on immediate complaints against the exclusion decision. This led to the suggestion that specific amendments to laws and regulations clearly outline exclusionary factors regarding the previous amendments. Following this, as part of a broader system requiring active revision and support in human and material resources, this research proposed extending the scope and jurisdiction for individual cases, enhancing the defendant consent mechanism, identifying essential eligible cases, and enabling citizen participation trials in specific branch courts, emphasizing the urgent need for a sufficient judicial workforce. Furthermore, as a mid-and long-term plan, this research suggested bifurcating criminal cases into two categories, introducing streamlined procedures for minor offenses.

Extending to procedural and operational improvement strategies, this research reviewed measures to address issues as citizen participation trials increase, such as the expanding variety and complexity of cases and the overwhelmed workload of courts. Specifically, this research analyzed the practice and survey outcomes to invigorate daily trial proceedings and simplify sentences in various aspects. This included projecting potential challenges and formulating corresponding mitigation strategies. Furthermore, it introduced a way to foster awareness and education among citizens and legal professionals.

This research holds significance as it delves into the underlying factors precipitating the current predicament encountered by citizen participation trials, focusing on the criteria for

implementation, and empirically investigates both the imperative for rejuvenation of citizen participation in trials and the tangible strategies for improvement. Ultimately, this research is expected to contribute constructively towards formulating strategies to invigorate citizen participation in the judicial process.

35

A study on the Protection and Participation System for Crime Victims (2024)

Misun CHO
Professional Researcher

Before establishing the criminal justice system, victims were central to and indispensable to the justice process. Victims could directly retaliate against the perpetrator or demand compensation for the damage. After the criminal justice system was established as part of the national system, victims lost status and rights toward offenders. They weren't able to ask for restitution or punishment directly. Offenders and prosecutors (representing the public or the nation) were central to the criminal justice system. Otherwise, victims were excluded from the system and usually asserted as a 'forgotten party.' During the 19th century, people realized that the traditional criminal justice system didn't effectively prevent crime. In the late 20th century, issues related to protecting women and child victims from attack or abuse were brought attention to the public, which led to the victim movement. The victim received social attention again. This global trend has also influenced Korea. Korea tried to introduce a system that protects victims, but these attempts still do not meet victim's needs or the public's expectations. This is why a study on the victim(or victimology) must go on despite numerous studies that have been done.

This study asserted that the criminal justice system should reflect victims' increased desire to participate in the criminal process. It introduced the Korean criminal justice system from the victim's perspective, starting with the investigation stage and ending at the trial stage by law and practice. After examining the problems, this study reviewed the improvement measures.

This study dealt with the investigation procedure, including the complaint system, notification system, victim lawyer system, and appeal procedure. As victims are not yet fully informed during the investigation, the officer should improve their attitude toward the victims' rights. Also, this study suggested enacting a law and utilizing the Korean Information System of Criminal-justice Services. The current law requires victims' requests to be notified in advance, which makes some victims hardly informed. Victims should be notified; otherwise, they ensure they don't want to. The victim lawyer system aimed to protect victims initially, but it still has not developed as an aid for victims' participation. To promote victims' participation in criminal procedure, all victims should ensure their right to legal assistance from a lawyer by revising the Criminal Procedure Act. Lastly, the current system does not guarantee the victim's right to appeal effectively because of the passive practice of the prosecutor during the trial; this study suggested the victim's participation in the procedure.

In trial procedure, this study focused on the victim's right to view and copy litigation documents, the special provisions of the Sexual Violence Punishment Act on the admissibility of evidence for video statements of sexual violence victims under the age of 19, and the victim impact statement during trial proceedings. The victim's right to view and copy litigation documents is ineffective because there are significant discrepancies in permission and scope of authorization to view or copy litigation documents between judges. This study reviewed law amendments, overseas legislation and opinions from judges, lawyers, victim assistance organizations and then introduced standards for permission for viewing and copying litigation documents. The special provisions of the sexual Violence Punishment Act on the admissibility of evidence for video statements of sexual violence victims under the age of 19, which was revised following the Constitutional Court's decision, do not seem to be sufficient to protect victims. This study proposed to review the witness interrogation questionnaire in advance during the trial preparation process and utilize the video witness interrogation system. Lastly, the victim's right to be heard during the trial process is not fully guaranteed. Victims summoned as witnesses should be notified of the purpose of their right to be heard. A process for a Victim Impact Statement must be established for victims who are not summoned as witnesses. Since the document submitted by the victim instead of an oral statement contains a victim impact statement and evidence, this study proposed to standardize and systematize the written submission procedure.

36

A Study on Improving Service of Process in Criminal Cases (2024)

Mun Sik JEON
Research Officer

The service system plays an important role in proceeding numerous litigation procedures from the initiation to the termination of a lawsuit. As an indispensable component of the adjudicatory apparatus, it ensures the preservation of due process by formally notifying parties of pending actions and safeguarding their capacity to assert their legal right. To preclude post hoc disputes and uphold procedural integrity, the execution and certification of service of process must adhere rigorously to statutory mandates and prescribed protocols.

An examination of the existing mechanisms of the service of process in criminal cases reveals a multitude of systemic deficiencies. Foremost among these is the fact that substantial proportion of criminal case documents that remain unserved. This failure exacerbates the significant procedural delays, facilitates the adjudication of defendants in absentia, and engenders complications, including challenges in managing the custody or release of defendants, the nonappearance of witnesses, and impediments to securing critical evidence. Additionally, notable inefficiencies are evident in the public service of process within criminal proceedings. Unlike in civil litigation, where statutory provisions authorize the publication of notice on official court websites, no such legal framework exists for criminal cases. Furthermore, courts must expend signigicant administrative resources to execute public service of process manually, often resulting in protracted case durations. The cumulative impact of these procedural shortcomings underscores the urgent need for structural reform. Moreover, operational inefficiencies also persist within the service of process system. These include insufficient specificity in service reports submitted for judicial review, the rigid procedural rules imposed on service agencies, and the administrative burden stemming from the service-related tasks. Taken together, these challenges highlight the pressing need for comprehensive reforms to improve the efficiency and reliability of the service of process within criminal proceedings.

This report proposes a series of reformative measures, aimed at enhancing the service of process system in criminal proceedings. The proposed improvements encompass domains such as electronic service, traditional service, public service of process, and the safeguarding of recipients' procedural rights. Drawing from a comparative analysis of legislative models employed by domestic regulatory bodies, public institutions, and foreign jurisdictions, recognized for best practices.

To enhance the efficacy of the service of process, it is imperative to adopt electronic service as a means of addressing the inherent limitations of traditional personal service.

This necessity arises from the evolving lifestyle patterns of modern individuals, who are often absent from legally designated service locations during daytime hours, coupled with the widespread use of electronic devices such as smartphones, facilitated by advancements in information and communication technology. Nonetheless, an evaluation of the existing criminal e-proceedings framework highlights significant deficiencies necessitating remediation. These include logistical and procedural challenges in securing litigants' informed consent for participation in e-proceedings, the imperative to diversify and enhance methods for consent acquisition, addressing the distinct vulnerabilities faced by information-disadvantaged groups, and harmonizing the relationship between electronic service and public service of process. These considerations underscore the need for a comprehensive and nuanced approach to reforming the electronic service system within criminal proceedings.

Concerning enhancements to non-electronic service of process, several strategies merit consideration. These include employing pre-service notifications via mobile text messages to inform recipients of impending document delivery, implementing a mobile-based location notification system to facilitate service, and adopting an integrated service framework akin to the systems currently utilized by courts in civil e-discovery cases. Additional measures involve the professionalization of service agencies, refining the format and content of service reports for greater clarity and reliability, and deploying the court's police force to issue subpoenas to witnesses as part of a comprehensive witness protection program at the judicial level. Collectively, these initiatives aim to enhance procedural efficiency and ensure robust compliance with service requirements.

Regarding the public service of process mechanism in criminal proceedings, it is crucial to establish a system of public notification through the court's website to address the shortcomings of the traditional approach of posting notices on court bulletin boards. To further strengthen the procedural integrity of public service of process, it is necessary to design and maintain a detailed checklist. This checklist should encompass essential information, such as contact details and addresses from case records, verification protocols, and safeguards to prevent unlawful practices in public service of process. Additionally, an institutional framework must be developed to align the court's evidence-separation submission system with the procedural requirements for initiating public service of process orders, ensuring both operational efficiency and adherence to legal standards.

Judicial institutions often encounter difficulties in obtaining adequate support from relevant agencies when fulfilling subpoenas or executing search warrants-both of which are essential prerequisites for effectuating service of process as stipulated under the Act and Rule on Special Cases Concerning Expedition of Legal Proceedings.[1)] As a remedial measure, it is advisable to empower bailiffs to undertake supplementary actions to ascertain the defendant's whereabouts and to prepare detailed delivery reports when effectuating service. Furthermore, utilizing court constables to enforce subpoenas and establishing court

1) Act on Special Cases Concerning Expedition of Legal Proceeding and Rule on Special Cases Concerning Expedition of Legal Proceeding.

police units tasked with locating defendants and enforcing summonses could significantly enhance procedural efficiency, ensuring trials progress in a timely manner. Additionally, the statutorily prescribed six-month time-frame for service of process under the Law is incongruent with contemporary trial practices and necessitates a reduction to better align with judicial expediency.

While the service of process is fundamentally designed to safeguard the recipient's right to petition for a trial, it simultaneously constitutes an exercise of public authority within the judicial framework. Given that recipients of service may incur certain legal disadvantages under litigation statutes, it is essential to balance efforts to improve the efficacy of service with robust measures aimed at protecting recipients' right. Consequently, it is imperative to devise targeted protections for electronic recipients, non-electronic recipients, individuals subject to public service of process, and those belonging to vulnerable groups.

To advance the improvement of the current service of process system in criminal proceedings, this research undertook a comprehensive analysis of the current service of process in criminal proceedings through empirical methodologies, such as interviews, surveys, and statistical data analysis. The findings underscore critical systemic deficiencies and provide a foundation for evidence-based recommendations aimed at fostering procedural efficiency, enhancing service reliability, and safeguarding recipients' procedural rights.

IV Family

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1

A Study on the Improvement of Family Relations Registration Process for Overseas Koreans (2014)

Eunjung CHOI
Judge Researcher

This report, recognizing the constitutional value of 'overseas citizens protection', proposes a couple of ways to enhance procedural rationality regarding family registration for overseas citizens.

Overseas citizens, constrained by time and place, have practical difficulties in family registration despite their urgent requirements, but the current family registration procedures leave a lot to be desired in terms of meeting the needs of overseas citizens. A detailed examination of the problems related to family registration procedures, based on a structural analysis of relevant laws and current data, was confirmed by a survey of relevant officials.

This report makes the following proposals on how to improve the current system.

First, a specialized organization called the 'Overseas Citizens Family Registration Center' should be established. This organization would exclusively be in charge of family registrations for overseas citizens under the Seoul Family Court and have court officials with rich legal knowledge and practical experience conduct family registrations, through partial amendment of the 「Act on the Registrations, etc. of Family Relationship」.

Second, overseas dispatch of court officials, now only implemented in Japan for diplomatic missions, should be expanded to US, China, etc. where many Korean citizens reside.

This improvement might be able to establish a virtuous cycle of 'accurate recordings in family registers' through a 'speedy and efficient registration procedure' in accordance with 'due reporting by overseas citizens'.

2

Research on Measures to Improve the Family Counseling System (2015)

Eunjung CHOI
Judge Researcher

The family counseling system promoting healthy and enduring family relationships has continued to change and make progress. The purpose of the present research is to examine the current system and propose adequate and efficient measures to improve family counseling.

After defining the concept of 'family counseling', this research explores the necessity and benefits of the system by conducting a comparative law analysis that studies the systems of the United States, Germany, France, Japan, Austria and Australia. In particular due to their applicability in Korea, the Californian legislation on family counseling and Austrian counseling guidelines are discussed extensively.

Measures of improving the family counseling system are examined in the following manner. First, general measures are proposed. Second, specific measures such as introducing mandatory counseling, recruiting additional personnel within the court, managing counsellors, adopting guidelines, diversifying counseling methods, and others are explored. Finally, the adoption of optional court-ordered counseling is proposed as an alternative to general mandatory counseling.

In-court counseling services should hopefully contribute to establishing a court system of wardship and welfare that can provide actual assistance to minor children and other members of the family.

3

Research on Measures for Establishment of Standard of Property Division (2016)

Eunjung CHOI
Judge Researcher

The division of property is a family non-litigation case that provides the court with significant discretionary power. The starting point of the present research was the understanding that the advantages of discretionary division of property should be maintained as much as possible while at the same time acknowledging the need for developing a standard of property division so as to guarantee legal predictability for the parties and source of reference for judges.

In forming the basis of setting the applicable standard in practice, this research examines the history and current operation of the institution of property division, with particular focus on the properties subject to division and how the ratio of division are determined in practice. A comparative law analysis of various foreign jurisdictions is also conducted.

Moreover, the standards for recognizing a separate property and a new property as being subject to division, as well as the principle of equal division have been considered in establishing the standard of property division.

The present research will hopefully contribute to establishing a rational standard of property division that reflects not only the legal standpoint but also the overall situation of the society and the public legal consciousness.

4

Research on Improving the Adult Guardianship System (2017)

Yoonjung KIM
Judge Researcher

Four years have passed since Korea's incompetent/quasi-incompetent system—mechanisms that uniformly restricted a protected person's capacity to act regardless of individual differences—was substituted by the adoption of an adult guardianship system. The aim of this new system was to enhance the right of self-determination by respecting an individual's residual capacity; however, despite several competent organizations' efforts in training and educating guardians for the successful operations of the new system, there is still much to be desired. In particular, it has been noted that there is no effective supporting institution to supervise the entire process of the adult guardianship system and that there is a lack of effective communication and cooperation between guardian-related institutions.

Since each process (e.g., training, appointing, supporting, and monitoring adult guardians) of the adult guardianship system is closely connected, if any one process is not properly implemented, then the entire operation of the system is negatively affected. It is, therefore, necessary to establish a supporting institution or system that can effectively supervise the entire operation of the system, build a cooperating relationship between the relevant authorities, and provide an information center where all related information is assembled, stored and managed. This research conducts a comparative legal analysis of different countries that adopted and employed adult guardianship systems to see how those countries have developed supporting institutions or systems for effectively training, appointing, supporting and monitoring adult guardians. Based on this comparative analysis, this research offers suggestions for improving Korea's management of the adult guardianship system.

In order to provide practical and specific improvement measures, this research includes an analysis of interviews with experts including judges, court officials, and various professionals from guardian-related institutions. It is, however, important to note that this research mainly examines issues regarding the current status of the court-appointed (involuntary) adult guardianship system, and the question as to how we could encourage the use of voluntary guardianship contract that goes beyond the scope of this research.

As Korea is rapidly becoming an aging society, national interest in adult guardianship will be rising. For devising a better way to successfully operate an adult guardianship system, it is necessary to find a way to build a partnership between courts, the government, expert groups and private organizations to improve social infrastructure. This research hopes to make an important contribution to the current practice of Korea's adult guardianship

system and thereby help lead to meaningful improvements that provide adults who need guardianship service with a safe and trustworthy system.

5

Improvement Measures for the Adoption System (2018)

Moon Hee AN
Professional Researcher

The ultimate end of adopting a minor child is to ensure the best interests of the child. To that end, the adoption should be built upon qualified adoptive parents. In Korea, various problems had arisen from past adoption law which had allowed adoption by the free will of parties without government intervention. Thus, an amendment to the law was recently made placing the court's permission requirement for adopting the minor child.

Nonetheless, successful adoption may not be assured by sole means of the court's permission requirement. Social problems such as child abuse by adoptive parents would eventually recur, if a thorough and objective qualification process for adoptive parents, training for the prospective adoptive parents, the provision of knowledge for actual issue resolutions, the expertise and objectivity of adoption practitioners, etc. are not guaranteed.

In cases of foreign countries, the government or the public institution is involved in overall adoption procedures whereas our adoption procedures are directed primarily by private agencies for historical reasons. In particular, the examination and screening for adoptive parents that are the most important part of the adoption are performed by the government or the public institution. Furthermore, the primary role of foreign adoption institutions are confined to introduction to adoptable children or post-adoption services. Thereby, the adoption system would be more objective and unitary than ours because the government or the public institution manages the examination and training of adoption practitioners, training for the prospective adoptive parents, determination and management for foster carers premised on adoption, etc.

However, above all, it is necessary to recognize the need for the perception that the protection of biological family is the highest priority like the principle of the Hague Adoption Convention. That is, to provide biological parents with circumstances to raise their children through the economic and social support is given first priority. Next, if it is not possible for the biological parents to raise their children, the adoption by a relative would be considered. Then, domestic adoption, rather than international adoption, should be lastly considered. In order to join the Hague Adoption Convention, the amendment to the adoption law should be made in a way that the adoption is not the best resolution but the last alternative.

6

Research on Improving the Family Court Probation Officers System (2018)

Moon Hee AN
Professional Researcher

It has been 55 years since the first probation officer was assigned to the newly established Seoul family court. Today, in 2018, the number of probation officers in Korean family courts is approaching 180—and nearly 150 of those officers are specialized. The aim of this new system was to enhance the family court's guardianship and welfare functions by utilizing experts in fields of human relationships (e.g., psychology, welfare studies, and education) at judicial proceedings. But many argue that the goals of the new system have not been sufficiently realized due to a lack of family court probation officers, insufficient training, limited promotional opportunities, and a lack of care and attention by the Korean Judiciary.

Acknowledging these problems, this research conducts a comparative legal analysis of similar systems in other countries, which may shed light on how Korea could improve its system. It is, in this regard, especially noteworthy that the function and role of family court probation officers in the U.S. are broader because U.S. officers also provide education for parents before divorce, counseling, and mediation services. The German courts are also providing counseling and mediation services by utilizing external agencies. In Japan, which has the most similar system to Korea, family court probation officers provide counseling and mediation services, as well as fact-finding tasks. There, the number of officers now amounts to 1,600.

Based on a comparative analysis, this research examines suggestions for improving the effectiveness of Korea's system. In particular, a number of suggestions are examined, including: streamlining the processes of selection and operation, managing officers as a team, increasing the number of specialized probational officers, rotating officers at a regional level, prohibiting new hires from being placed alone, providing feedback on problems of reports, and utilizing the periods of family investigation effectively. Increasing training opportunities for both new hires and long-term employed officers—in addition to specialized trainings for family probational officers, juvenile case probational officers, and family protection case probational officers—could also provide a good resolution. Ultimately, increasing the effectiveness of the operation and expertise of the family court probation officers could contribute to improving Korea's family courts' guardianship and welfare functions.

7

A Study on the Unified Family Court in USA (2019)

Moon Hee AN
Professional Researcher

Hamilton County Juvenile Court, the first family court in the world, as well as in the United States, was founded in 1914, and thus the U.S. family court has a history of about 100 years. Since the U.S. family court has recently been expanding its role as a problem-solving court based on the philosophical ideology of therapeutic justice, the family court can be considered as a Unified Family Court, distinguished from the existing family court.

The problem-solving court that realistically implements therapeutic justice, a philosophical ideology based on the ethics of care, can represent the Unified Family Court for problems such as the loss of trial authority due to a lack of professionalism by the existing family court judges, insufficient opportunities for the relevant parties to express their opinions due to a lack of procedural rules, amplification of family conflicts caused by adversarial litigation structures, delay of litigation due to a surge in family cases, inefficiency in handling of cases due to unclear jurisdiction and unnecessary duplication of procedures, and conflicts of judgment on a family's complex case.

The more specific and expanded role as the Unified Family Court includes not only the protection of family members, including parties to a lawsuit, from current and future conflicts faced by them by courts intervening in improving the actions or circumstances of parties to a lawsuit in family law cases, reduction of emotional confusion, implementation of efficient and effective trials by facilitating reconciliation between parties to a lawsuit and family members, and change of thought outside the framework of the existing formal logic regarding the role of courts and judges, but also ultimate solutions to social problems beyond judgment on legal disputes.

Moreover, as part of essential case management for the fulfillment of these roles, the U.S. Unified Family Court has introduced systems such as first, team-based or one family, one judge (OFOJ) practice to solve family law-related cases; second, the provision of court guardianship welfare services; and third, the provision and connection of comprehensive services through external agencies. Recently, the Korean family court has also been expanding the guardianship welfare role as well as the original role of the court and emphasizing the ideology of therapeutic justice. Since the problems that arise in the U.S. family court are eventually problems of the Korean family court, it can be expected that the Korean family court acts as a problem-solving court that realizes therapeutic justice through the introduction of the foregoing three measures.

8

A Study on the Improvement of Family Relations Registration System with a Focus on the Certificate by Registration (2019)

Hyejeong LEE
Research officer

Since the enactment of the「Act on Registration of Family Relations」on January 1, 2008, the area with the most frequent revisions in the family relations registration system is the field of certification by registration. Providing personal identification information in the form of certificates by extracting necessary matters from the records of an individual family relationship register is the basic operation of the certification system by registration. The fact that the most frequently revised field since the enactment of the「Act on Registration of Family Relations」is regulations related to "certification", suggests that, in terms of the family relations registration system, the area that draws the greatest public attention, thus playing the most influential part, is the "certification of identity relationship such as the birth, marriage and death of an individual".

Accordingly, this report suggests the following three proposals as an improvement related to the operation of the certification system by registration.

Firstly, after reviewing the matters that can be selected as the contents of the specific certification by registration, the following suggestions were made: ① The applicant shall be able to choose whether or not to include the deceased, registration base, or the place of family register in the specific certificate; ② The applicant shall be able to select the persons listed on the certificate to be issued as a specific certificate; ③ The applicant may choose whether or not to include a record of name change, gender change, correction history, past matters, etc., and be issued a specific certificate with such information; ④ A specific certificate shall be issued by selecting a past marriage relationship, adoption relationship, or adoptive relationship, etc., as the condition to describe the phrase limiting the period of proof; ⑤ Establish a new integrated specific certificate or use-specific certificate on the premise of law revision.

As of December 27, 2019, the certificate by registration can be issued in English, and therefore the following suggestions were made: ① Expand the matters that can be proved in English; ② Review the policy so as to allow certificates to be issued in languages other than English.

Lastly, emphasis was placed on the need for legal provisions restricting third parties who excessively require detailed certificates, and or use the acquired personal identification information for other purposes.

9

A Study on Measures to Protect the Rights of Minors in Divorce Proceedings with a Focus on Uncontested Divorce and Visitations (2023)

Jongmi LIM
Research Officer

The Ministry of Justice introduced the Family Litigation Act Amendment Bill to the National Assembly on November 10, 2022, with the goal of strengthening children's rights in divorce and other family cases. The bill is the result of years of debate and research, which began in 2013 when the Supreme Court of Korea established the Family Litigation Act Amendment Committee and set out to completely amend the Family Litigation Act.

The major provisions governing divorce proceedings account for the significant impact of family trial outcomes on minor children by requiring hearings to seek minors' opinions in the event of a trial that directly affects their welfare. The bill also contains the appointment of procedural assistants, whose role is to determine and report to the court minors' intentions in judicial proceedings, thereby aiming to reinforce the rights and welfare of minors.

Disappointingly, even if the aforementioned bill is passed by the National Assembly, it does not enhance the rights or welfare of children in uncontested divorce proceedings. This is because an uncontested divorce proceeding is not part of a family case and thus not subject to the Family Litigation Act.

Korea's current uncontested divorce proceeding is the process chosen by most couples seeking a divorce, but it has been overlooked because it does not involve a trial. The Civil Act was amended in 2007 to strengthen the court's guardianship function in order to protect children, but the court almost never intervenes as a guardian in uncontested divorce proceedings for the reasons stated above.

Accordingly, this study examines the current operational status of the uncontested divorce proceeding and analyzes the issues associated with uncontested divorce from various perspectives in order to suggest improvements aimed at enhancing the welfare of minor children.

It also considers bringing in experts to help with the fulfillment of visitation rights and to address the issue of visitation failures that affect divorced families in our society. To do so, the study examines the visitation expert systems of Germany and Austria.

Expecting immediate change may be difficult because improvements to the uncontested divorce process and the introduction of visitation experts will be accompanied by budgetary constraints. However, it is hoped that the recommendations made in this study will be useful in the future when the uncontested divorce process is improved and welfare policies for divorced families are established.

10

Strategies for Effectively Guarantee Children's Right to Birth Registration (2024)

Wonju AN
Research officer

"Children's Right to Birth Registration" refers to the right to have basic information related to a child's birth registered so that the nation can manage it as early as possible, allowing for the child's protection after birth. This is the first step in expressing one's personality and is a prerequisite for forming one's personality, and it also serves to confirm the identity of the parents as the primary guardians and to publicize this information externally. In response to this right, the nation has an obligation to guarantee the children's right to birth registration.

The birth notification system, which has been in effect since July 19, 2024, represents a significant and progressive change in terms of "immediate" registration of children with Korean nationality born in medical institutions, as well as in expanding public awareness of such births. On the other hand, the nation's obligation to ensure the children's right to birth registration will become increasingly important, issues related to parent-child relationships will become more prominent, and the human rights necessity of registering the birth of foreign children will also gain relatively greater emphasis.

Therefore, this study extends beyond existing discussions, which have primarily focused on "unregistered" children, to examine the problems within the current system. It categorizes these problems into: ① birth registration, ② parental records, and ③ the registration of foreign children's births, based on the specific aspects that should be included under the "right to birth registration as a child's growth foundation." The study also suggests strategies based on a survey of citizens who use the birth registration system directly and public officials handling family relationship registrations, while considering legislative examples from Germany, France, and Japan. Moreover, ④ the study examines the current status of the protected childbirth system, which has been in place since July 19, 2024, alongside the birth notification system, and proposes considerations for its future practical implementation.

The main proposed Strategies are summarized as follows:

Regarding the current birth registration system, the following improvement measures are proposed: ⓐ Easing the distinction between children born in and out of wedlock by adjusting relevant regulations in the procedural law, considering the public perception that this distinction should be abolished, ⓑ Removing the ranking of subordinated childbirth registration obligors and expanding the scope of the subordinated childbirth registration obligors, ⓒ Strengthening the nation's obligation by designating prosecutors or local

government heads as the obligors for birth registration, rather than eligible reporters, ⓓ Recording the place of registration, one of the items to be recorded in the birth registration report, only when necessary for identification purposes, excluding the origin of surname from the items to be recorded, and revising the criteria for distinguishing between children born in and out of wedlock so that the public can understand them more easily and reduce the distinction, ⓔ Expanding the scope of individuals who can prepare documents proving childbirth, so that a birth certificate prepared by a doctor or midwife is not the only option, and ensuring that the form alone identifies all required materials for attachment to the birth registration report, ⓕ Not applying the five-character name limit on children born to a korean father and a foreign mother, provided it does not violate the principle of paternity under the Civil Code, ⓖ Expanding the scope of online birth registration to include instances where the biological father attaches a birth certificate prepared by a doctor or midwife to make a birth registration with the effect of recognition, ⓗ Subdividing the types of birth registration into forms that are more familiar to the public and providing specific guidance on how to register childbirth online.

Regarding parental records, the following improvement measures are proposed: ⓐ An examination of the status of births within 300 days after the end of marriage, and the status of requests for permission to establish paternity and for recognition over the past five years, more than 87% of children born within 300 days after the termination of marriage in the past five years (over 91% when limited to cases where the marriage was terminated by divorce) are not the biological offsprings of the former spouse. Therefore, the probability that children born within 300 days after the termination of marriage are children of the former husband can no longer be maintained as before. Also, as of 2023, 13% of children born during marriage are born within 200 days after the establishment of marriage, indicating that a significant number of children have unclear grounds for recording the father, and this proportion is continuously increasing. Considering these points, revising the scope of paternity presumption to cover the period from the establishment of marriage to before its termination. This also takes into account the social and institutional changes such as the increase in divorce and remarriage, the introduction of a divorce deliberation period and conciliation-prepositive principle, and the introduction of a Birth notification system. However, in cases where the marital relationship is terminated due to death (including declaration of disappearance or absence), it is highly likely that the child is the child of the former husband, so the child is presumed to be so. In cases where there is a later marriage and the presumption of paternity is contested, the child is presumed to be the child of the later marriage husband, which is relatively more likely, to prevent a gap in the child's legal protection. Additionally, ⓑ respecting the child's right to know their biological ties and their intention to establish a parent-child relationship with their biological father, we propose to recognize the right to deny paternity for adult children who have a direct interest in parent-child relationships. Considering that advancements in science and technology have made it easier to identify biological fathers, and that biological fathers who wish to actively raise their children are emerging, we also propose to recognize the right of biological fathers to

deny paternity within the scope of contributing to the child's welfare, especially given the introduction of the birth notification system and the likelihood of early disputes over parent-child relationships based on the presumption of paternity.

Regarding foreign child birth registration, it is proposed that they are registered in the nation's public records through a separate procedure based on a case-by-case organization system, which also allows them to prove their identity through the system. This considers that the children's right to be registered of their birth is a "human right," not merely a "citizen's right," and the necessity of guaranteeing this right cannot be hindered depending on their nationality or residence status. In particular, respecting that some parents avoid birth registration due to fear of being identified as illegal immigrants, notwithstanding the presence of a home country embassy in Korea, we propose establishing a separate birth registration procedure that operates independently of residence status. This procedure should include clear provisions exempting the obligation to report the discovery of illegal immigrants to ensure its effectiveness.

Lastly, regarding protected childbirth, since the enactment of the Crisis Pregnancy Protection Childbirth Act primarily aims to enable children to grow up healthy in their original families, step-by-step counseling should be implemented in a practical manner. Applications for child protection measures by mothers in crisis and proxy applications by their guardians should be limited to protect minor mothers or mothers lacking sufficient decision-making ability, which is the original purpose. In cases of proxy applications by guardians, substantial counseling must also be provided to the guardian. In addition, it is emphasized that the child's right to know their biological ties must be fully respected concerning the disclosure of birth certificates, and continuous consideration is needed to respect the biological father's rights, even within limited boundaries. To respect the mother's right to self-determination, swift legislation related to abortion and a substantial expansion of social support for various family types must be pursued together.

Even after this study, conducted in conjunction with the introduction of the birth notification system and protected childbirth system as new changes in childbirth registration, we hope and expect that continuous research and new measures will be implemented to effectively guarantee children's right to birth registration. Thereby, we hope to create a society where short but happy moments are abundant in everyday life.

V Commercial Code

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1

Rethinking the Admiralty Procedure (2018)

Jeeyoung BYUN
Professional Researcher

Admiralty and maritime cases are international and complex in nature. Moreover, cases involve movable ships which consequently require speedy and effective proceedings. While Korea may be viewed as one of the leading maritime nations, it still lacks in its specialty and effectiveness when it comes to the court case proceedings.

In this line of context, there is an urgent need to make a neutral evaluation of admiralty proceedings in Korea and to study what we can learn from other leading maritime nations, so that the policy makers may be able to design desirable and sustainable judicial policies for admiralty case proceedings in Korea with an objective view.

This research aims to present practicable solutions to the improvement of admiralty proceedings after thorough examination of the current status and comparative study of the admiralty proceedings in England, the Unites States, China, Singapore, Hong Kong, New Zealand, Australia, the Netherlands, and Panama.

In terms of specialization, securing admiralty judges and court martials may be most necessary, attainable by providing high quality training in the Judicial Research and Training Institute, conducting deep research in the Judicial Policy and Research Institute, and building legal database in the Court Library. As for the improvement in speed and effectiveness, rearranging procedural rules in line with the international standards, effectively managing cases by designated staff, and providing court application forms are recommended among others. Enhancement of judicial access and promotion of alternative dispute resolution are policies that should also be implemented harmoniously with other policies suggested above.

All in all, it is important that the judiciary has the long term vision as well as the short term motivation to contribute to the admiralty law and maritime industries.

2

Research on the International Commercial Court (2020)

Junghwan KIM
Professional Researcher

As the importance of trade between countries is emphasized and the free movement of goods and capital is active, the number of international commercial disputes is steadily increasing. Accordingly, providing an efficient, economical and equitable means of dispute resolution to the parties of international commercial disputes is considered to be a developing field, and one of the most significant emerging measures to resolve international commercial disputes can be said to be resolution through the international commercial court. The establishment of the international commercial court is taking place in a competitive way in various countries, and this has resulted in new market forms of litigation and adjudication. In other words, the ability of a country's judiciary to deal with cases independently, efficiently, appropriately, quickly and economically has evolved into an important factor in measuring the trust of the parties in investment and trade transactions.

This research paper will examine the status quo of the establishment and operation of the international commercial court in line with its accelerating establishment, and the phenomenon of forum selling also represented by the international commercial court. Based on these considerations, the essay will examine the necessity of establishing an international commercial court in Korea, as well as the factors that should be considered for this.

3

A Study on Multiple Derivative Suit (2021)

Jeonghee SIM
Dispatched Researcher

Multiple derivative suit was adopted through the amendment of the Commercial Act (that was promulgated and enforced on December 29, 2020). Multiple derivative suit allows a minority shareholder of a parent company to exercise their shareholder rights in a legal entity of interest beyond the company that issues shares held by the shareholder as a plaintiff with legal standing to seek liability for a subsidiary from the subsidiary's director. This means that discussions on corporate governance in company part of the Commercial Act, which premise a single legal entity, have begun to expand to corporate group. I think that it is time to proactively predict and examine issues around multiple derivative suit, including a possibility of lawsuit abuse, which the economic community has concerned about, and considerations in legislation and judicial practice. In particular, litigation system such as multiple derivative suit requires a study paying attention to arguments on interpretation or trial method in judicial practice.

Multiple derivative suit is a new litigation system that extends the range plaintiff's standing applied in shareholder's derivative suit. Except for the plaintiff's standing, a demand requirement against the company, defendant's standing, and the object of a suit have a similar to a shareholder's derivative suit. Considering the similarities between the two litigation systems, the empirical analysis of judgments on shareholder's derivative suits which started to be filed in 1997 and have been accumulated to 2020 can provide practical and meaningful implications to issues regarding multiple derivative suit. In order to derive the legislaton's improvement tasks and considerations in judicial practice on multiple derivative suit, this study analyzes empirical data such as filing and judgment trends of shareholder's derivative suits, and grounds for rejection, dismissal, or admission stated in judgments.

This amendment of the Commercial Act was a minimal revision in terms of content considering the legislative discussions about multiple derivative suit that had taken place till then. This is a result of reflecting the economic community's concerns, etc., but there is a lack of empirical statistics to support such concerns. Rather, in order to enhance the legislative effectiveness, there are requests for expanding the scope of corporate groups applicable to multiple derivative suit and creating special provisions regarding plaintiff's standing to reduce the blind spots that are identified between shareholder's derivative suit and multiple derivative suit.

Regarding judicial practice, it is expected that the court's tendency to strictly interpret the demand requirement in shareholder's derivative suits will lead to a higher rejection rate in multiple derivative suit. However, there seems to be a room for flexible interpretation or possibilities to concede cure of defects by considering the original purpose of the demand requirement, which is designed to give companies an opportunity to pursue director's liability before filing a lawsuit. The business judgment rule specific to corporate cases, which is a judicial review standard originating from the U.S. case law, is accepted in Korean judicial practice, but it is found that there is a difference from U.S. case law about how it has been actually applied in court rulings in Korea. To properly apply the business judgment rule, which was introduced to respect a company's decision making on business matters and refrain from active judicial interventions, it would be necessary to form and develop precedents which calssify cases to apply the rule to and find methodology that conducts trials based on procedural matters about a company's decision making. In addition, this study suggests other considerations in judicial practice, including need for improving the limitation of director's liability as seen in admission judgments, contents of the litigation requirements specific to multiple derivative suit, and handling the corporate group's interests in multiple derivative suit, which premise a corporate group.

4

A Study on the Establishment of Maritime Court (2021)

Jae-chan LEE
Judge Researcher

Maritime cases are distinguished by their high level of specialization, urgency, and international relevance. Maritime courts should be established to ensure their effective adjudication, equipped with specialized expertise. This study aims to delineate the structural and functional framework necessary for the establishment of such a court.

Regarding jurisdiction, it is proposed that the maritime court have authority over substantive matters, including maritime civil and administrative cases. In addition, it may also handle preservation and enforcement actions related to vessels, limitation of liability cases, and international maritime disputes. This study primarily analyzes the legislative proposal concerning maritime court jurisdiction submitted to the 21st National Assembly, while also proposing alternative options where appropriate.

It is recommended that the subject-matter jurisdiction of the maritime court align closely with that of ordinary district courts. It is proposed that, to avoid confusion during the transition to this specialized system, maritime courts should have jurisdiction over both first-instance cases and appeals from rulings by single judges, similar to the jurisdiction of district courts. Considering factors such as the expected volume of maritime cases, the need for jurisdictional centralization to foster specialized expertise, and accessibility for litigants, this study recommends establishing two maritime courts as the most practical solution. The study also provides a detailed review of their size, design, and regional placement.

For the smooth functioning and specialization of maritime courts, adopting procedural rules with specific provisions for litigation procedures, ship arrest/injunction precedures, and enforcement actions is essential. For example, exceptions for evidence submission in ship collision cases, fast-track procedures, virtual hearings, and court sessions during evenings or holidays are proposed. Before the formal establishment of maritime courts, expanding and operating maritime-specialized panels within existing courts is recommended to mitigate initial inefficiencies.

Finally, this study provides detailed recommendations on personnel systems—including maritime-specialized judges, hearing advisors, judicial assistants, and enforcement officers—as well as strategies to attract international maritime cases and promote the universality of the new courts.

VI Administrative Law

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1

Regulatory Reform and Judicial Review (2016)

Inkook KAY
Professional Researcher

Judicial polices should focus on the modernization of the state and society, thereby incorporating the whole process into the legal order or contributing to its development. As part of a mid- to long-term judicial policy research this study discusses regulations and regulatory reforms from a legal perspective and examines the underlying theories thereof.

In the present research regulation is defined both as a policy concept and as a narrowly construed legal concept. First, such an approach is instrumental not only in grasping the meaning of the term itself but also in seeking the direction of reform by understanding concepts related to the subject matter. Next, this research studies the question of procedural legitimacy with regard to regulatory reform that is required in the enforcement of regulations. Relevant cases are introduced in order to shed light on the changing patterns of regulatory realities and the relevant problems in reforming regulations. Once the direction of regulatory reform is determined based on the above discussion it can serve to realize the common good of a new form of state. Regulatory reform needs to resolve the problem of excessive state intervention, where the focus should be on the qualitative, and not merely quantitative aspect. Futhermore, regulatory reform should be liberty-oriented as well as geared towards achieving the goal of the common good. To this end, various regulatory strategies must be pursued so as to ensure the implementation of a broad range of methods by different bodies. The guarantor state(Gewährleistungsstaat) theory provides a legal interpretation for such regulatory strategies, and guarantor administration(Gewährleistungsverwaltung), the administrative aspect of the theory lends the basis for the formulation of the legal concept of regulation thereby establishing regulatory law(Regulierungsrecht) as a new area of law.

This research examines the role of the court in the development process of regulatory reforms, and analyzes the relationship between the court and administrative agencies. Particular emphasis was placed on a comparative analysis of issues concerning the authority and effectiveness of court decisions. Also the present research introduced cases where court decisions led to regulatory reforms. Finally, a legislative recommendation was proposed for amending the administrative procedure act and the expansion of the administrative court.

Keyword: Regulation, Regulatory Reform, Deregulation, Gewährleistungsstaat, Regulierungsrecht, Self-Regulation, Regulated Self-Regulation

2

Improving the Procedure for Refugee Status Determination and Judicial Review in Korea (2017)

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Professional Researcher / Judge Researcher

Since Korea's first Refugee Act came into force in 2013, the number of people seeking asylum in Korea has rapidly increased—the number of applications for refugee status was 2,896 in 2014, 5,711 in 2015, and it climbed to 7,542 in 2016. The number of refugees filing a suit for judicial review of refugee status determination in courts has also increased with 423 filings in 2014, 1,220 in 2015, and a staggering 3,161 in 2016. But the rates of refugee recognition in Korea have been decreasing, and they still remain far less than the average rate of refugee recognition among OECD countries. It has been argued that Korea's low rate of refugee recognition is caused, at least partially, by the fact that the procedure for refugee status determination has not been designed and operated in a manner that is fair and efficient.

The procedure for refugee status determination requires considerable expertise because not only must decision makers determine whether claimants are likely to be persecuted in their countries of origin, but they must make these determinations under challenging circumstances. These decisions frequently rely on scant and unreliable evidence, often based solely on testimony by claimants who do not speak the local language and who have a strong interest in the outcomes of their claims. These decisions also pose significant risk because false negatives may result in refugees being deported to countries where they face persecution, torture, or even death—a result that would put Korea in breach of international law. Despite these challenges and risks, decision makers—including government officers, adjudicators and judges who are already burdened with heavy caseloads—are encouraged to decide cases as quickly as possible to not only stabilize the status of claimants, but to also prevent those who are not refugees from trying to use the asylum procedure as a means of extending their stay in Korea while they seek a work permit. Experience shows that the longer the procedure is protracted, the more likely the procedure is to be abused. Due to these special characteristics of the refugee status determination procedure, it is important that the procedure be thoroughly designed and performed in a manner that is fair and efficient.

This research examines the current state of Korea's procedure for refugee status determination and judicial review, and offers suggestions for devising a fairer and more efficient asylum procedure that could better meet the goal of the system. In doing so, this research examines the following.

First, this research examines how Korea's procedure for refugee status determination and judicial review have been designed and performed, and identifies problems in the current procedural system. To accomplish this, the present research examines provisions of

the Refugee Act and the relevant regulations on the refugee status determination procedure; it also analyzes statistical data provided by the Ministry of Justice and the National Court Administration on the rates of refugee recognition and of appeals at each stage of the procedure. In addition, this research analyzes the results of interviews and surveys of experts, including refugee adjudicators, judges, professors, public interest lawyers, and legal officers from the United Nations High Commissioner for Refugees (UNHCR) regarding the state of the current procedure. By doing so, this research shows that the current procedure needs to be improved to be fairer by improving the claimants' procedural satisfaction from the refugee status application stage through the judicial review stage, and to be more efficient by developing procedural safeguards that prevent those with manifestly unfounded claims from abusing the procedure.

Second, this research conducts a comparative legal analysis of procedures for refugee status determination and judicial review in other countries—including the United States, the United Kingdom, Canada, Australia, New Zealand, Germany, France, and Japan—which may shed light on how Korea could improve its refugee adjudication and trial procedure. In particular, this research provides an overview of each countries' refugee laws, policies, and procedures, and examines what kinds of procedural mechanisms were adopted to make the procedure fair and expedient. It also introduces international standards on the procedures for refugee determination, particularly developed by the UNHCR and European Union.

Finally, this research offers suggestions for improving each and every stage of the procedure, from the refugee status application stage through the judicial review stage. In the pursuit of protecting refugees' human rights, the values of efficiency and fairness often come into conflict. In a system burdened by many applicants and few decision makers, efficiency often becomes the prevailing value; however, while efficiency is undoubtedly important, fairness must be the ultimate goal. With these principles in mind, this research introduces suggestions for improving both fairness and efficiency. By offering these recommendations, this research aims to help establish a fairer and more efficient asylum procedure in Korea.

3

Administrative Judgments and General Principles of Law (2021)

- focused on the General Principles of Administrative Law in France -

Woo Kyung PARK
Professional Researcher

This study aims to examine the general principles of administrative law found in french administrative judgments in order to enlighten the importance of the role and meaning of general principles of law in administrative judgments.

As is generally known, written laws function as a primary criterion in judgments, but in case of "legal gaps," unwritten law, particularly the general principles of law, plays an important role in filling in the gaps. In this sense, general principles of law can be defined as "unwritten legal norms that are effective even in the absence of written law."

The primary reason for examining the general principles of law in the context of administrative judgments is that it has greater role and importance in administrative law, compared to that in other laws. Also, the number of provisions of administrative law is incomparably greater than other areas of law. Under these conditions, it is inevitable for an administrative judge to have general principles of law in mind for a systematic thinking.

Despite the important roles the general principles of law play in administrative law, there exist only few studies concerning this topic. General principles of law applied to administrative cases in Korea have its roots in general principles of German administrative law, such as the principle of equality, the principle of proportionality, the protection of legitimate expectations, etc. In judicial reviews of administrative action dealing with conflict of public and private interests, more diverse comparative legal cases need to be examined to ensure that various standards reflecting diverse perspectives are presented.

The general principles of law in French administrative law("les principes généraux du droit," hereinafter referred to as "PGDs"), which reflect the constitutional history of France, are discovered and declared by administrative judges. Compared to the general principles of German administrative law that are relatively abstract, PGDs in French administrative law are specific. Even abstract legal principles among PGDs, such as the principle of equality, are subdivided into specific domains, differentiated in detail by reflecting its specificity. Examining the PGDs may help us find sub-principles that complement existing abstract principles.

The main contents of this study are as follows:

1. A brief overview of the French judicial review system of administrative courts and the historical context in which it was formed were presented, and the definition and development of PGDs in this context were examined. The way in which PGDs are derived and the legal

status of them were also presented.

In French administrative law, PGDs are defined as "a certain number of principles which do not appear in texts but which the case law recognizes as having to be respected by the administration, their violation constituting an illegality." PGDs defined here may correspond both to what we normally call a 'principle' and a 'rule'. However, PGDs are rules in many cases in the sense that they can be used as major premises in syllogisms.

The term "PGDs" appeared in administrative case law since the time of World War II, when France had experienced rapid political changes. After the adoption of the Constitution of 1958, the Council of State(Conseil d'État) gave legitimacy to PGDs by linking the statutes (especially the constitutional text) with PGDs. However, PGDs can be applied without statutory provisions invoked therewith and exist independently of them.

The Council of State takes a consistent position on that judges discover PGDs from the general spirit of law and merely confirms them, and that it is not a creative exercise. In fact, the administrative judges have derived PGDs based on 'substantial sources', most of which are provisions of positive law, that are consistent with the values shared by the society of the time.

It is difficult to uniformly state the legal value of PGDs. In its Répertoire de contentieux administratif, the Council of State divides the legal value of PGDs into cases where PGDs are derived from legal provisions (1) and cases where PGDs are derived by judges from the general spirit of law (2). In the former case, the effect of PGDs depends on the hierarchical place of the norm in the hierarchy of norms. In the latter case, it is considered that PGDs have a value inferior to the law(la loi) and superior to a decree(un décret).

The significant role of PGDs comes from the characteristics of the French judicial system. One of the special characteristics of the French judicial system is the duality. Courts are divided into two major branches: an administrative branch and a judicial branch. The administrative courts are in charge of administrative cases and the judicial courts are in charge of civil and criminal cases. Thereby, judge recruitment systems are differently operated for each branch, assuring the expertise of administrative courts. The Council of State, being the supreme administrative jurisdiction in France, has autonomously developed *les PGD administratif*.

2. Based upon the aforementioned contents, the types of PGDs and their contents were reviewed in detail. According to the classification system of the Répertoire de contentieux administratif of Council of State, the PGDs can be divided into principles of political philosophy and those of legal technique. The former is linked to several ideas: to the French liberal tradition; to the underlying logic of French institutions and the necessities of life in society; imperatives of equity and the existence of fundamental social rights. The latter falls into three distinct categories: principles that govern administrative action; principles that govern administrative repression; principles that govern judicial activity. This systematic classification reveals that the way in which PGDs are discovered and declared is not abstract

nor arbitrary.

3. The implications of examining PGDs were presented in structure/content perspective. In terms of structure, the Council of State's classification system itself is meaningful to examine. The specific contents of PGDs can be a helpful reference, but the way it is typified gives us greater implications, since criteria for judicial review need to be categorized even more when they are abstract principles. Classification work specifying the criteria for judicial review not only helps those who make administrative judgments but also gives predictability to the litigants. Examining the way the Council of State categorizes and subdivides the principles to structure the precedents could potentially contribute to the resolution of administrative cases.

In terms of content, PGDs can provide practical help for administrative judgments by presenting stable judgment criteria. In French administrative law, PGDs often correspond to rules which function as a major premise subsuming a case in a syllogism. Judgment criteria in the form of rules make it easy to argue its application process.

On the other hand, PGDs under French administrative law is to protect human dignity, not to take the side of one of the opposing parties. For example, patient's freedom of choice of doctor is one of the PGDs, but there is no such principle that favors either side in a dispute between doctors and pharmacists. PGDs provide an answer to the question of what should be a judicial criterion in judgments, even if it is not stipulated in the statutory law.

In short, the systematic classification of PGDs and its content centered on human dignity may serve as a reference to support the consistency and independence of administrative judgments. This study highlights its potential.

4

Research on the Instance System for Administrative Cases Concerning Fair Trade (2022)

Bongcheol KIM
Professional Researcher

The Korea Fair Trade Commission (hereinafter referred to as "KFTC"), as a collegiate administrative agency under the authority of the Prime Minister, administers and enforces laws and regulations, including the Monopoly Regulation and Fair Trade Act (hereinafter referred to as "Fair Trade Act"), which functions as a fundamental law of competition. In the event of violations of the Fair Trade Act, KFTC imposes corrective measures: impose surcharges, issue corrective orders, send warning letters, etc.

In accordance with article 100 of the Fair Trade Act, the Seoul High Court has jurisdiction over any lawsuit contesting the administrative actions of the KFTC, and the Supreme Court hears the cases on appeal. Accordingly, administrative cases concerning fair trade (hereinafter referred to as "fair trade cases") are carried out in two-instance court proceedings.

Critics have pointed out problems with the two-instance trial system for fair trade cases, and have argued that three-instance system should be available for fair trade cases as it is for general administrative cases. Related amendments to the law have been submitted several times.

The debate on the instance system for fair trade cases involves issues relating to the scope of the court's jurisdiction and court specialization. Therefore, it needs to be studied comprehensively and systematically in the perspective of judicial policies as well.

The main arguments for maintaining the two-instance system for fair trade cases include the need for a high level of expertise in judging violations of the Fair Trade Act, the adverse effects of prolonged litigation, the existence of alternative measures to protect the rights of the accused such as making amendments to the Fair Trade Act, etc. On the other hand, arguments of the critics who are for the three-instance system include the need for protection of the rights of the parties in accordance with the expanded scope of the right to access to courts, the necessity for the independence of the KFTC, existing problems related to the quasi-judicial proceeding by KFTC, the controversy over the KFTC's unseparated authority to conduct investigations and to adjudicate, the need for balance between regulatory actions of the KFTC and other agencies, etc.

The debate on the instance system for fair trade cases is linked to the issues of the independence and regulatory expertise of the administrative agency, prompt resolution of disputes by courts, protecting the parties rights through expanding the scope of the right to

access to courts, quasi-judicial administrative proceedings, etc. In this context, deciding on which instance system to adopt for fair trade cases is a matter of establishing a legislative policy by balancing the advantages and disadvantages of the two system.

In order to maintain the two-instance system for fair trade cases the following requirements must be met: Strengthen the independence of the KFTC; Enhance fairness by separating the KFTC's power to investigate and adjudicate; Guarantee substantive due process and legal representation; Contain individual and dissenting opinions in adjudications if the adjudication does not represent in whole or in part the unanimous opinion of the commissioners.

In case the three-instance system is introduced by a statute revision, legal uncertainty may increase as litigations take longer. Therefore, it is necessary for the court to reduce the appeal rate by improving fact-finding hearings, increase the number of professional judges, and establish specialized chambers in courts. The KFTC may also consider having career groups such as "financial examiner" (tentative name) and professional advisors engaged in the process of fair trade cases, and having the KFTC officials dispatched to courts.

Furthermore, in order to balance the advantages of the two systems for fair trade cases, another possible option would be adopting both systems for different cases: Applying two-instance system for the cases where the amount of the surcharge imposed does not exceed a certain level, and three-instance system for the rest.

Courts have accumulated considerable experiences and gaind expertise in fair trade cases, and judicial interpretations have contributed to the fair trade system, protecting the rights of people as well. Considered from perspectives on judicial policy, the instance system for fair trade should focus on the prompt resolution of cases based on the judicial expertise and on the protection of the peoples' rights through court's substantial fact-finding.

If three-instance system becomes available for fair trade cases, it would be a way of enhancing judicial fairness, judicial transparency and judicial specialization. In this context, it is considered necessary to actively discuss the introduction of the three-instance system for fair trade cases.

5

Local Autonomy and Judicial Review (2023)

Bongcheol KIM
Professional Researcher

The local autonomy system guaranteed by the Korean Constitution is a system in line with the ideology of liberal democracy, which not only strengthens participatory democracy and fundamental rights of the people through resident participation, but also realizes political and administrative pluralism through the functional separation of powers in the national governance order. also realizes political and administrative pluralism through the functional separation of powers in the national governance order.

Since its introduction of local autonomy, local autonomy as a constitutional system has been specifically formed and activated through the enactment and revision of the Local Autonomy Act and related regulations, but also, it has been so through judicial review in practice.

Through judicial review, courts have developed many legal principles concerning the system of local autonomy and have influenced the revision and enforcement of Local Autonomy Act and ordinances enacted by local governments. Yet, we lack a comprehensive and systematic study on the judicial review of local autonomy. It is therefore necessary to comprehensively examine the direction of judicial review of local autonomy system and the role of courts in the formation and revitalization of local autonomy.

It is also necessary to study institutional issues related to judicial review of local autonomy, such as overlapping powers of the Supreme Court and the Constitutional Court in cases on Local Autonomy Act and instance system issues of administrative litigation related to local autonomy.

The formation and revitalization of local autonomy through judicial review implies that judicial review is grounded on fundamental considerations of the nature and function of local autonomy rather than textualism in interpreting statutory law on local autonomy.

Considering the constitutional guarantee and the significance and function of local autonomy, courts should proactively seek to strengthen and revitalize local autonomy in interpreting and applying the Local Autonomy Act. On the other hand, however, the court must also find a balance between local autonomy and the rule of law through judicial review.

Through their judgments based on specific facts, the court have played a neutral role in providing concrete direction for legislation and law enforcement in relation to the local autonomy system. In this way, the court have shaped and activated the local autonomy system guaranteed by the Constitution within the framework of the rule of law.

The formation and revitalization of the local autonomy system through judicial review can be summarized as follows:

① Strengthening local autonomy and residents' welfare by expanding the right of local governments to enact ordinances; ② Upholding the principle of checks and balances within local governments; ③ Enhancing democracy in local autonomy administration by increasing residents' participation; ④ Ensuring the legitimacy of local governments in conducting their own affairs through judicial review of state supervision, and clarifying the requirements and scope of such supervision; ⑤ Active judicial review of the expulsion of local council members and reviewing the validity of such expulsions in light of the legal status of local council members; ⑥ Ensuring and expanding the right of local governments to conduct their own affairs through lower standards of review of financial soundness; and ⑦ Securing the effectiveness of the dispute resolution system between local governments and establishing standards for judicial review of decisions on shared water landfills and its boundaries.

In modern society, as demands for democracy based on pluralism and functional separation of powers increase, it will be necessary to strengthen and revitalize local autonomy. Consequently, the role of courts in the formation and revitalization of local autonomy will gain greater emphasis. In accordance with this trend, courts should engage more actively in judicial reviews that are based on fundamental considerations of the meaning and function of local autonomy.

Concerning the judicial review system for local autonomy, there is also a pressing need to resolve the issue of overlapping powers between the Supreme Court and the Constitutional Court in cases on Local Autonomy Act, and the instance system issue of administrative litigation related to local autonomy.

Judicial reviews of decisions concerning municipality's jurisdiction of landfill sites and the exercise of the right to revoke or suspend orders or dispositions of local government leaders fall under an unconstitutional form of public law litigation. These reviews require a factual determination of specific illegality, which should be subject to judicial review of the Supreme Court.

Regarding the instance system issue of local autonomy-related administrative litigation, it is appropriate for the High Court to serve as the court of first instance, considering the case processing time, the importance of judicial review of findings of fact that consequently eases the burden on the Supreme Court, and local government's right to a trial.

6

Restriction on Freedom of Assembly and Demonstration for the Prevention of the Spread of Infectious Diseases (2023)

Hyun Jung SONG
Professional Researcher

The right to freedom of assembly, as a form of collective speech, is enumerated in Article 21 of the Korean Constitution and is regarded as a crucial fundamental right in democracies. In particular, the right to freedom of assembly is not only a fundamental right but also a cornerstone of democracy and a right enjoyed by minorities. It preserves democracy by protecting the political expression of marginalized groups and socially disadvantaged people who are not granted political representation.

In an attempt to curb the spread of COVID-19, administrative agencies, including police departments, city and district offices, and others, have issued notices banning outdoor assemblies and demonstrations far more frequently. As a result, in a number of cases, people have asked the courts for preliminary injunctions to temporarily suspend the execution of these prohibitions on assembly and demonstration.

The decision to issue a preliminary injunction against the ban on assembly and demonstration carries the same weight as a final judgment due to the nature of preliminary injunction cases. This is because, while the case on the merits is still being heard, the opportunity for an assembly and demonstration has already passed. Consequently, it becomes moot since there remains no cognizable interest in the outcome.

Although it should not have imposed a blanket ban on the right to assembly and demonstration in public for quarantine purposes, the government nevertheless restricted this right short of a standard of review. In the face of an unprecedented COVID-19 outbreak, the court began to take new factors into consideration in addition to the factors typically considered in assembly-related preliminary injunction cases when deciding whether to uphold the ban on assembly and demonstration. These novel factors included the status quo of outbreak and control of COVID-19 and the likelihood of adhering to COVID-19 preventive measures.

Courts have also made significant changes to the way they evaluate elements that are normally taken into account prior to the COVID-19 pandemic, such as the time, place, and manner of assembly and demonstration by concentrating on the possibility of COVID-19 spreading. Furthermore, courts have been gradually utilizing attachment conditions to temporarily suspend the execution of administrative authorities' notices prohibiting assembly and demonstration.

As shown by the SARS outbreak in 2002, which sparked a global pandemic, the MERS

outbreak in 2015, and the COVID-19 outbreak in 2019, which has been spreading recently, a major outbreak of new infectious diseases is undoubtedly possible in the future. In order to strengthen the checks and balances on the executive branch's arbitrary exercise of power and to support Korean courts in making decisions that are in harmony with fundamental rights, this research aims to analyze decisions made in the post-COVID-19 era in cases involving prohibitions and restrictions on assembly and demonstration. Through comparative legal analysis, this research also seeks to provide recommendations for effective remedies for rights related to restrictions on assemblies and demonstrations in order to prevent the spread of infectious diseases.

7

Judicial Review of AI Based Administrative Decision Making (2024)

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The advancement of artificial intelligence (AI) technologies has introduced new possibilities for administrative decision-making processes, while simultaneously presenting significant challenges to existing judicial review frameworks. In particular, the enactment of Article 20 of the Administrative Basic Act in 2021 established a legal foundation for fully automated administrative actions, ushering in a new era of administrative law enforcement. These advancements promise substantial improvements in administrative efficiency and speed but also raise critical questions about ensuring legal legitimacy and transparency in such processes. This report aims to analyze the legal issues surrounding AI-based administrative actions and propose a structured approach to judicial review in this evolving context.

The report first examines various domestic and international cases to illuminate the current state of AI integration into administrative practices. In South Korea, the Ministry of Food and Drug Safety's "Electronic Review 24" system automates the assessment of repetitive imports, reducing processing times from 48 hours to under 5 minutes, thereby maximizing administrative efficiency. However, this efficiency comes with the challenge of securing legal legitimacy for automated decisions. Seoul City's initiatives, such as the "Smart Welfare Check-In Service" for elderly residents and the AI-based 119 Emergency Management System, further showcase the potential of AI to revolutionize public services and enhance citizen safety.

Internationally, notable examples include China's use of facial recognition CCTV for public safety and fugitive tracking, and the United States' deployment of the COMPAS system for evaluating recidivism risks in criminal justice. While China's systems highlight the expansive use of AI for surveillance and security, they also raise concerns about privacy violations and data protection. In the U.S., the COMPAS system demonstrates how AI can support objective decision-making but has faced criticism for its lack of algorithmic transparency and racial biases. These cases underscore the legal and ethical complexities inherent in AI-based administrative decision-making.

The report delves into the foundational concepts of AI technologies—such as machine learning, deep learning, and representation learning—and their potential applications in administrative processes. Machine learning enables predictive decision-making through data pattern recognition, while deep learning provides robust analytical capabilities for handling complex administrative challenges. Representation learning facilitates the

automatic extraction and categorization of data, enhancing administrative rationality. These technologies not only improve efficiency but also serve as tools to uphold legal legitimacy and procedural fairness.

A key focus of this report is the judicial oversight required to address the legal and ethical challenges posed by AI-based administrative actions. Central to this discussion is the issue of transparency and explainability. The so-called "black box" problem, where AI algorithms operate opaquely, complicates judicial scrutiny. To address this, the report emphasizes the need for rigorous dataset verification, enhanced algorithmic explainability, and strengthened transparency standards. Such measures are essential to building trust in AI-driven decisions and ensuring effective judicial oversight.

The report outlines three specific scenarios for judicial review, proposing tailored approaches for each. First, when an administrative body operates within its area of expertise, using AI under clear statutory authority with transparent algorithms and outcomes, judicial review should primarily assess statutory compliance and the foreseeability of outcomes. Second, where the statutory authority is ambiguous or the algorithm lacks transparency, judicial review should apply principles such as proportionality, akin to those governing human decision-making, to evaluate the reasonableness and acceptability of decisions. Third, when AI is used outside an administrative body's area of expertise, courts should directly assess the reasonableness and legality of the decision. These criteria provide a structured framework for judicial review in the AI era, enhancing the precision and clarity of legal reasoning.

Finally, the report underscores the urgency of legal and institutional readiness to address the rapid evolution of AI technologies. Harmonizing technological advancements with legal and ethical norms requires proactive legislative amendments and the establishment of new judicial review frameworks. This report concludes by emphasizing its significance as a foundational resource for guiding legal and policy development in the AI era, providing a roadmap for future research and discussion.

VII Intellectual Property Rights

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1. Research on United States Patent Trial Practices (2016) ····· 183

1

Research on United States Patent Trial Practices (2016):

United States Court of Appeals for the Federal Circuit, United States District Court, United States International Trade Commission, and United States Patent and Trademark Office

Hyun Jung SONG
Professional Researcher

In the twenty-first century, ever more Korean corporations are tapping into foreign markets, exploiting intangible assets with the advent of a knowledge based information society. In doing so, international disputes over patents between domestic and foreign corporations are on the increase. Especially, the patent battle between Apple and Samsung Electronics adds to the increasingly tough environment for Korean companies in the United States. Under such circumstances, it is significant to have a solid grasp of the patent trial proceedings of the United States so as to establish effective confrontation strategies when engaging in patent trials in the United States.

The types of patent trials in the United States appear to divide into two categories according to their strategic objectives: infringement and invalidity. A patent trial generally begins with the filing of a complaint alleging patent infringement by a patent owner, and an accused infringer then asserts the defense of invalidity of the patent at stake to avoid liability.

The patent owner who believes that his patent is being infringed has two venues for relief. The patent owner may seek relief in a federal district court, the International Trade Commission, or both. Yet, an allegedly infringing article has to be imported into the United States to bring an action before the International Trade Commission. Furthermore, parties seeking monetary relief must resort to the district court since remedies available at the International Trade Commission are limited to prohibition from committing specific unfair trade practices.

On the other hand, the accused infringer has several ways to escape liability. Where the proceeding is initiated before the district court or the International Trade Commission, the accused infringer may assert counterclaims of invalidity, or raise an affirmative defense of invalidity. Alternatively, he may challenge the patent's validity through post grant proceedings at the United States Patent and Trade Office, i.e., post grant review, covered business method review, inter partes review, and ex parte reexamination, to defend against patent infringement trials.

If the party remains dissatisfied with the outcome of the trial, he may further file an appeal to the United States Court of Appeals for the Federal Circuit since it is the sole appellate court having nationwide jurisdiction over patent appeals. The United States Court of Appeals for the Federal Circuit has long established case law doctrines and unified rules

for patent trials.

This research articulates the procedural aspects of the aforementioned institutions resolving patent disputes, with special emphasis on the individual practices of judges. By doing so, hopefully this research can contribute to the advancement of sound practices for the Korean judiciary in the field of patent litigations.

VIII Bankruptcy

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1

Research on Proper Supervision Measures of Insolvency Representatives after the Establishment of the Bankruptcy Court (2014)

Minho KANG
Judge Researcher

In order to secure the integrity and expertise of insolvency representatives who, along with the court, play crucial roles in insolvency proceedings, these proceedings place emphasis on insolvency representatives' qualifications and have a system of managing and supervising their conduct.

The establishment of the bankruptcy court is driven by, and pursuant to, the demands both inside and outside the court for specialized handling of insolvency cases. In order for the bankruptcy court to successfully establish itself as a specialized court running insolvency proceedings fairly and efficiently, the kind of foundation to be laid in the management and supervision of insolvency representatives must be examined.

Proper management and supervision of insolvency representatives requires fair election of qualified insolvency representatives, securing of judges' and court officials' expertise, strengthening of Bankruptcy administration committee's management and supervision functions, and facilitating of creditors' (or a creditor committee's) participation in the proceedings, through efficient assigning of roles among those managing and supervising insolvency representatives and securing of human, physical and systemic foundations.

2

The Research on the U.S. Bankruptcy Administrator Program (2018)

Hyunbum KIM
Judge Researcher

In this modern society, it is inevitable that companies and individuals occasionally become insolvent. Hence it is important to have an effective and efficient bankruptcy system in place so that the society can keep developing in a stable economic environment. For more than a decade after the DEBTOR REHABILITATION AND BANKRUPTCY ACT was enforced in 2006, Korea has made an extraordinary advancement in the area of bankruptcy, and finally established the Seoul Bankruptcy Court, which specializes in the insolvency law, in 2017.

Along with the development of the bankruptcy system, social interest in the administration and supervision system of bankruptcy cases including monitoring of all the bankruptcy-related parties, is increasing. Some argue that Korea should introduce a bankruptcy system supervised by governmental bodies, like the U.S. Trustee Program. In the U.S., however, there is the U.S. Bankruptcy Administrator Program which is administered by the judiciary, as well as the U.S. Trustee Program governed by the ministry of justice. The former was originally designed to operate ad hoc in some areas until the latter launches. However, it became the permanent system as it was said to have an advantage over the U.S. Trustee Program in that it maintains the cooperative relations with bankruptcy courts, reflects the regional elements, and enables more efficient and flexible administration.

In Korea, the administrative committee and reorganization & bankruptcy committee were set up and have gained many experiences already. In the circumstances, it would be more efficient to enhance the pre-existing system through the study on the U.S. Bankruptcy Administrator Program rather than to abolish the current system, to pour the massive budget, and to establish a new supervising vehicle inside the governmental bodies. In this regard, this report presents the U.S. Bankruptcy Administrator Program which is widely accepted to be more similar to our current system and proposes the way our system would be reformed further.

I hope this report prompts more profound discussion and research on how the specialties and effectiveness of the bankruptcy supervising bodies could be raised.

3

The Empirical Studies on Bankruptcy Cases and the Role of the Court (2021)

- Focused on Personal Bankruptcy Cases -

Donghyeon KIM
Senior Judge Researcher

Compared to general civil laws and criminal laws, bankruptcy laws have more concern on promoting the policy of rehabilitation and revitalization of individuals and the national economy, than on adjudicating "right or wrong". Bankruptcy laws are also intended to balance such policy effects with the rights of creditors who would lose their claims in the bankruptcy process. In order to examine if bankruptcy laws has served and will be serving the intended functions of these policies, this research focuses on the current status and challenges of empirical studies on such policy-oriented bankruptcy legislation.

With this purpose in mind, this research first examines the U.S. Consumer Bankruptcy Project (CBP). The CBP is a series of empirical studies on consumer bankruptcy that were conducted on a large scale, five times, from 1980 to 2015 and has been considered as an exemplary model of empirical research on consumer bankruptcy. Investigators of the CBP collected and analyzed data to address various research agendas, which have been also utilized by many other researchers for their individual studies. In addition, this research reviews other various domestic and foreign empirical studies. Implications could be derived from the research agendas and methodologies used by these studies, which may shed some lights on how to develop empirical research in Korea.

For the development of the bankruptcy system in Korea, more empirical research needs to be conducted in the future. The court is critical in fostering an environment for this empirical research because it has records of bankruptcy cases, which are the most important data in empirical research, and it has the relevant expertise gained from overseeing bankruptcy cases.

As an example of empirical research conducted by the court, the Seoul Rehabilitation Court has been working on establishing database that can be the basis for empirical research. This important work has been, however, conducted by full-time judges, trustees in bankruptcy, and personal rehabilitation commissioners as their schedule permits. Considering that academia has long appealed to the court for the need of empirical data for the development of the bankruptcy system through more empirical research in Korea, measures to ensure that the current works of the Seoul Rehabilitation Court continue and expand nationwide need to be devised.

Given the importance of the role of the court in fostering empirical research in this area, lessons could be found from the U.S. Bankruptcy Abuse Prevention and Consumer

Protection Act (BAPCPA), which lays the responsibility of collecting empirical data on federal courts. Having such a provision may not be necessary for courts in Korea to establish a database for empirical research; however, having such a provision could have unnecessary debates avoided on the role of the court and provide legislative ground for securing budgets and personnels.

If conditions allow, the court could also consider adopting research agendas and conducting full-fledged empirical research by itself. Under the current organization structure of the Judiciary of Korea, the Judicial Policy Research Institute (JPRI) would be an appropriate institution that carries out such tasks; however, the JPRI would need to recruit and retain professional researchers with expertise in empirical studies in advance.

If empirical studies are conducted by the court, the method and scope of publication of research results also need to be considered. In particular, decision-makers would need to discuss and decide whether the research results would be open to public; and if so, they would need to decide how they would be made available and whether a translated version in major foreign languages such as English would be provided.

In order to reduce the workload caused by empirical research, the electronic system of the court needs to be improved to computerize court records and facilitate data retrieval. It is suggested to expand the e-Form reporting system by trustees in bankruptcy nationwide, to introduce the e-Form system even in personal rehabilitation procedures, and to take measures to automatically extract data from formalized forms in consideration of the growing number of electronic lawsuits.

4

Research on the Special Corporation Bankruptcy Procedure (2024)

- Focusing on Non-profit Corporations and Virtual Asset Exchanges -

Sangjin TAK
Judge Researcher

The application of the law on the Debtor Rehabilitation and Bankruptcy Act in South Korea has primarily focused on for-profit corporations, although it also includes natural persons and juristic persons. It was natural for most cases to revolve around rehabilitation and bankruptcy of for-profit corporations, as they constituted a significant portion of the incidents. However, this premise is gradually changing. Bankruptcy cases involving non-profit corporations such as private school foundations, medical corporations, and religious corporations are increasing due to changes in social structure and the expansion of the legal market. With South Korea's birth rate being at the lowest level in the world, resulting in a decrease in the school-age population, restructuring of school foundations becomes inevitable. Medical corporations, responsible for the public domain of people's lives and health, cannot be viewed solely from a market-oriented perspective and are subject to separate regulations, such as medical laws. Religious corporations, as communities of believers united by common faith, face challenges in how to handle cases where they enter the legal framework of the debtor rehabilitation law due to a decrease and division of believers leading to operational failures.

On the other hand, the rapid proliferation of virtual assets, a new concept of goods, raises questions about how to characterize them in terms of legal nature and how to understand and interpret the specific legal procedures when virtual asset exchanges, operating as businesses, go bankrupt. Since the Debtor Rehabilitation and Bankruptcy Act in South Korea did not anticipate virtual assets, interpreting them in a legally consistent manner poses a challenging issue. However, there is a high necessity to appropriately address these issues given the practical problems that are arising nowadays.

First, we examine the issues at each stage of the rehabilitation procedure for non-profit corporations. From the stage of applying for rehabilitation, non-profit corporations should actively utilize the Autonomous Restructuring Support Program to hold off on the decision to commence rehabilitation and adjust the interests between debtors and creditors, focusing on early settlement of cases and thorough protection of stakeholders. It is encouraging that the Seoul Bankruptcy Court is exerting efforts to explore practical improvements to activate the Autonomous Restructuring Support Program.

Moreover, although non-profit corporations are naturally recognized the right to apply for rehabilitation under legal interpretation, it is difficult to acknowledge, through interpretative theories, the right of supervisory bodies of private school foundations

and medical corporations to file for rehabilitation on behalf of the debtor private school foundations and medical corporations despite the necessity. In many articles of association of non-profit corporations, a resolution of the board of directors is required for significant changes in the basic property, as the rehabilitation proposal involves changes in the debtor's basic property and rights, and the lack of such resolution at the time of application renders it illegal.

In the special case of private school foundations, it is not possible to request the suspension of the university closure and the dissolution order procedure previously granted by the Ministry of Education while applying for the commencement of rehabilitation procedures. When deciding to commence rehabilitation, it is necessary for the court to interpret the preconditions, such as the inability to pay debts due or the likely risk of bankruptcy, more leniently in cases where the disposal of property requires the permission of the supervisory agencies, especially for private schools. Considering the exchange value of properties of private schools, which are almost impossible to dispose of due to the slim chance of obtaining permission from the supervisory agencies, and reviewing the possibility of repayment or excess debt, is needed much precautions as focusing solely on formal logic may ignore the practical demand for a new start for the debtor through the adjustment of stakeholders' rights.

In cases of non-profit corporations, including schools and hospitals, if the chief director, representative of a religious organization, or similar figures are responsible for the deterioration of the debtor's assets due to criminal or unethical actions, it is necessary to appoint a third-party custodian who is separate from their influence, or a co-custodian along with the existing custodian if there is any doubt or unclear influence, in order to ensure fair and transparent appointment of custodians. Furthermore, during the crucial stage of preparing a rehabilitation proposal, for medical corporations, it is reasonable to interpret that the effect of the assignment of claims for nursing care benefit expenses as security is severed by the decision of commencement of rehabilitation proceedings, and therefore, these claims should be treated as rehabilitation claims, not secured rehabilitation claims. In cases like private school foundations and medical corporations, which are under the supervision of regulatory agencies, it is essential to consult these agencies during the preparation stage of the rehabilitation proposal and to obtain their permission in advance to assess the feasibility of the rehabilitation proposal; otherwise, without special circumstances, the feasibility may not be recognized because the ongoing administrative supervision over the debtor does not concentrate on the rehabilitation court. Additionally, for private school foundations, the distinctiveness of accounting practices, such as separating corporate accounting from school fund accounting and strictly prohibiting the transfer of school funds to corporate accounts, should be considered in preparing the rehabilitation proposal. Specifically, it may be appropriate to perpare separate rehabilitation proposals for school fund and corporate accounting, ensuring the principle of liquidation value guarantee for each and seeking the consent of creditors for each plan separately. An example of this procedure is the recently approved and concluded rehabilitation proposal for Myongji Educational Foundation. For

private school foundations, incorporating school consolidation or merger in the rehabilitation proposal may be considered, which requires ensuring the continuity of education opportunities and employment for the students and staff of the schools being absorbed or discontinued. For religious corporations, which often own properties limited to religious buildings and lands, preparing a rehabilitation proposal that involves selling these properties could fundamentally harm their religious activities; as an alternative, considering a sales and lease back approach to continue using the assets after selling them could be actively explored, to avoid leaving religious corporations with virtually no viable method to prepare a rehabilitation proposal.

Finally, non-profit corporations can also utilize M&A procedures in the rehabilitation procedure. Especially for private school foundations and medical corporations, since the concept of stocks does not exist due to the nature of nonprofit corporations, reviewing merger methods based on the acquisition and exchange of stocks, such as third-party stock purchases, is not feasible. Instead, the possibility of recognizing M&A based on the transfer of management rights is practically discussed. While there are opposing views on this matter, it is both legally and appropriately justified to recognize M&A involving the transfer of management rights for both private school foundations and medical corporations. Furthermore, when selecting preferred bidders in M&A, the leveraged buyout method should be strictly interpreted to ensure financial soundness.

On the other hand, in the bankruptcy cases of cryptocurrency exchanges, two critical aspects need to be considered: the protection of the rights of the users of the cryptocurrency exchange and the realization and distribution of the dividends of the cryptocurrency exchange. Recognizing users of the cryptocurrency exchange as bankruptcy creditors offers the advantage of granting them the right to file for bankruptcy. However, as mere bankruptcy creditors without any priority over other creditors, their satisfaction level regarding claims is likely to be very low due to their rights being limited to pro-rata distribution according to their claim amount, indicating inadequate protection of their rights. Legislative supplementary policies are necessary to address this issue. Additionally, various methods and incentives for asset inquiries for asset realization, legislative supplements for claim filing and bankruptcy participation, including the submission of creditor lists by bankruptcy participation agencies and the resulting claim filing effects, should be considered until then. Using the internet for filing through the trustee in bankruptcy could be a temporary solution. Moreover, the realization of virtual assets can be conducted through sales via exchanges for listed virtual assets, while unlisted assets might go through public auction procedures, or realization might be forsaken if not feasible.

As societal structures change and public's perceptions evolve, laws and their interpretations can also change. Nonprofit corporations, which used to be not initially the focus of much attention in debtor rehabilitation and bankruptcy laws, have recently seen an increase in cases and various legal issues that have yet to be discussed. The same applies to special for-profit corporations like cryptocurrency exchanges. It is time to lead a successful

insolvency system by thoroughly considering the uniqueness of each entity and harmonizing interpretations with debtor rehabilitation and bankruptcy laws.

IX International Law

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1

Research on the Court of Justice of the European Union and the European Court of Human Rights (2016)

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It would not be preposterous to think that the judiciary of the Republic of Korea with its advanced infrastructure would assume the leadership role in Asia's judicial integration. With such foresight, this research aims to learn lessons from the Court of Justice of the European Union and the European Court of Human Rights where the regional judicial integration has been seemingly successful.

After studying the jurisdictions, the procedural rules, and the organizations of both courts, this research notes the followings as common key factors which may have contributed to the courts' successful attainments in the region. First, with respect to the procedural rules, it is notable that the courts are continuously working to improve their efficiencies. Second, as for the organizations, transparency in the process of electing judges and provision of ethical rules are found as common. Moreover, a mutual respect for member countries' legal systems including languages as well as their legal backgrounds is also a common factor. All in all, the courts' elaboration on their cases seem to have contributed to the development of EU law, human rights law, and other international laws, while easily searchable database of judgments and decisions have increased judicial access to member countries' citizens and beyond.

2

Establishing an Asia-Pacific Court of Human Rights: Feasibility and Strategies (2018)

- Comparative Research on Regional Human Rights Courts -

Hyeyoung LEE
Professional Researcher

While states in Europe, the Americas, and Africa have established regional human rights courts that deliver binding judgments on states' alleged violations of human rights, Asia-Pacific remains the sole region without a region-wide court of human rights. Although continuous efforts have been made over the past decades by NGOs and other international and domestic institutions to promote the need for a regional human rights system in Asia-Pacific, the wide disparities between ideals and realities have not yet been bridged. This research aims to, first, assess the state of human rights systems in different regions by exploring development histories of existing regional human rights systems in Europe, the Americas and Africa. And second, this research seeks to examine the feasibility of establishing a human rights system in the Asia-pacific region, while analyzing strategies to establish such a system.

This research begins by exploring different development histories and current statuses of existing regional human rights systems in Europe, the Americas, and Africa. The common features of the development process between these regions observed that throughout several decades, states in Europe, the Americas, and Africa expanded the scope of substantive rights that the regional norms cover, strengthened the procedural mechanisms by regional institutions, and developed implementation mechanisms at the regional level. The pace of development, however, varies among different regions. The European Court of Human Rights is the most advanced as it is directly accessible to individual applicants and its jurisdiction is compulsory for all parties to the European Convention on Human Rights since it became permanent. In contrast, the American and African systems are not permanent, do not have compulsory jurisdiction, and an individual's procedural rights to file applications are still limited. Although the current state of effectiveness of the systems between different regions varies, examining their efforts and processes to develop mutually agreed upon norms, institutions, and procedures to promote and protect human rights in their respective regions would provide meaningful insights in devising ways to establish a regional human rights system in Asia-Pacific.

Next, this research examines the feasibility and strategies of establishing a regional human rights system in Asia-pacific. In doing so, this research presupposes that the concept of the 'Asia-Pacific region' lacks universally agreed upon boundaries—both geographically and politically. This research then demonstrates the necessity of establishing a regional human rights system in Asia-Pacific. Based on the analysis of the efforts and meaningful

changes of regional integration in Asia-Pacific, this research suggests that the challenges that have prevented the establishment of an Asia-Pacific human rights systems are not insurmountable. Acknowledging the recent emergence of regional norms and institutions to promote and protect human rights in Asia-Pacific, this research ultimately seeks to examine strategies to establish an Asia-Pacific human rights system. Three important factors make a regional mechanism function successfully: (1) states' commitment, (2) effective and fair procedures, and (3) collaboration between global and local human rights actors. Understanding these factors, this research examines three possible routes—narrow, wide, and networked approaches—to create an Asia-Pacific regional human rights systems proposed by the Advisory Committee of UN Human Rights Council. Based on the networked approach, which this research considers as the most feasible route, this research finally examines strategies to revitalize the existing sub-regional human rights systems in Asia-Pacific, adopting multiple thematic treaties that address commonly prevalent problems in the region, and creating a region-wide human rights treaty that covers commonly agreeable human rights in the region.

Lastly, this research concludes by proposing ways the Korean judiciary could contribute to the promotion and protection of human rights in the region. In particular, considering the important roles of the judiciary in implementing international human rights law domestically, this analysis suggests for the Korean judiciary to properly cite international human rights norms in delivering judgments, cooperate, and actively interact with judiciaries of other Asian states to promote a human rights culture in the region, and play a leading role in discussions and efforts to create an Asia-Pacifc human rights system.

3

Applying International Human Rights Treaties by Korean Courts : Normative Status and Interpretive Challenges (2020)

Hyeyoung LEE
Professional Researcher

The Republic of Korea has signed and ratified the seven core international human rights treaties: International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture; Convention on the Rights of the Child; and Convention on the Rights of Persons with Disabilities. In accordance with these treaties, Korea is obligated to give effect to its treaty obligations. Since article 6(1) of the Constitution of Korea adopts the monist approach to the implementation of treaties that regards international law and national law as two parts of a single system, the treaties to which Korea has become a party are automatically incorporated into Korean national law. Consequently, domestic courts shall be required to apply the treaties just like they apply any national law. The Korean domestic courts shall ultimately answer the question of which law prevails and how to interpret national law in a way compatible with treaty obligations when there are inevitable clashes between international law and national law. It is, therefore, necessary to examine the courts' judgments that applied human rights treaties in order to fully understand the normative status of these treaties and interpretive challenges associated with their domestic implementation in Korea.

The application of international human rights treaties may not be a day-to-day task for domestic judges in Korea. Statistics have, however, shown that it has become more frequent occurrence in recent days. Additionally, judgments providing concrete reasoning of domestic effect, status of international human rights treaties, and interpretive principles of them have begun to appear. Nevertheless, many commentators have argued that such recent practices have not yet been sufficient to dispel concerns over the legal culture in Korea in which most of judges are unfamiliar with international human rights treaties. Moreover, the provisions of these treaties are not sufficiently effective in application in Korean courts. With these concerns in mind, this research aims to examine the quantity and quality of judgments that applied international human rights treaties in Korean courts. This research also seeks to offer policy suggestions for expanding court resources to increase judges' familiarity with international human rights treaties and to support judges in interpreting and applying them. For these purposes, this research proceeds as follows.

Firstly, this research provides an overview of important interpretive principles, jurisprudences and resources available in both the international and national legal arena,

which would help domestic judges get a better (and basic) understanding of what issues and challenges they would face in applying international human rights treaties in domestic courts and of what rules and principles they could make use in order to arrive at the proper outcome. In particular, it introduces relevant interpretive sources published by major human rights treaty bodies, and sets forth general rules of international law on the interpretation of treaties codified in the Vienna Convention on the Law of Treaties as well as the existing specialized rules for human rights treaty interpretation that have been developed in the jurisprudence of the major human rights supervisory bodies and international courts. In addition, this research provides constitutional grounds for incorporating international law into domestic law and the hierarchical normative status of international law in the domestic legal system in Korea. Furthermore, it introduces developed interpretive approaches in resolving inevitable clashes between international law and national law to improve reciprocal engagements between the two legal systems.

Next, this research examines the state of application of international human rights treaties in Korean courts by conducting quantitative and qualitative evaluations of judgments rendered in Korean courts. For quantitative evaluation, a complete enumeration-based survey through an internal data search system on judgments that applied the seven core international human rights treaties shows variations in the number of judgments that applied the seven core treaties by each treaty, year, and litigation type. In addition, this research provides statistics on the acceptance/rejection rates of claims involving violations of the core seven treaties in judgments. Using qualitative evaluation methods, this research divides judgments into two groups and examines the reasoning adopted and steps taken by judges to arrive at different conclusions—judgments in support of or in denial of the claims involving international human rights treaties. By applying such analytical methods, this research shows that Korean courts tend to avoid making determinations upon international law in dealing with cases involving violations of international human rights treaties; instead, Korean courts tend to base their decisions on more familiar, national laws. This tendency effectively prevents the development of jurisprudence in international human rights treaties from being incorporated domestically. The research on judgments in Korean courts affirms the unfamiliarity of most Korean judges with international human rights treaties, which has significant policy implications.

Based on the implications drawn from the empirical research on judgments rendered from Korean courts, this research offers suggestions to increase judges' familiarity with international human rights treaties and to assist judges in engaging with those human rights treaties. In this regard, it is taken into account that the lack of both opportunities in getting trainings in international human rights law and interpretive resources have negatively contributed to the unfamiliarity of judges with human rights treaties. It is, therefore, suggested to incorporate the original text of the seven core international human rights treaties and relevant interpretive sources published by major human rights treaty bodies into the data search system in Korean courts and make them accessible and available to judges. Moreover, it is also recommended that courts expand and reinforce opportunities for judges

of training in international human rights law and its application in domestic courts. By offering these recommendations, this research aims to help the Korean Judiciary to fulfill its obligation and accountability to interpret national law in a way compatible with treaty obligations in order to protect and promote universal human rights.

4

Study on the Resolution of International Judicial Friction Arising From Pre-trial Discovery (2022)

Hyo Jung KIM
Professional Researcher

In principle countries in the civil law system such as Korea do not allow fishing expedition in the evidence-taking, whereas the United States widely permits the submission of materials for the purpose of fishing expedition through pre-trial discovery procedure. Korea made a particularized declaration pursuant to Article 23 of the "Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter "HCCH Evidence Convention")" that it will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents under certain conditions at the time of accession. Therefore, the United States shall not request Korea to submit the documents for the purpose of pre-trial discovery within the scope that Korea has expressly excluded through the above declaration.

Nevertheless, the U.S. courts are requesting the other Contracting States of the HCCH Evidence Convention that have made a Article 23 reservation, including Korea, to submit the documents in spite of going against the purpose of its declarations. Furthermore, even in cases to which the HCCH Evidence Convention applies, the U.S. courts issue pre-trial discovery orders based on the Federal Rules of Civil Procedure (hereinafter "FRCP"), thereby ensuing the unavoidable judicial friction. Against this backdrop, this study is aiming at solving two main problems. Firstly, it will establish the criteria regarding the execution of a request for pre-trial discovery of documents under the HCCH Evidence Convention, and secondly, it will suggest countermeasures against pre-trial discovery orders under the FRCP.

The criteria for determining whether to execute the United States' letter of request issued for the purpose of obtaining pre-trial discovery of documents under the HCCH Evidence Convention would be proposed as follows. First, since 'evidence' that is subject to the HCCH Evidence Convention is materials for proving the issues of litigation, if the documents listed in the letter of request are found to be irrelevant to the litigation issue, the execution shall be refused. Next, according to Korea's qualified exclusion under Article 23 of the HCCH Evidence Convention, statements regarding the possession or custody of documents are included in the object of refusal to execute. Therefore, the execution of deposition regarding these statements can be refused. In addition, submission of documents not specified in the letter of request should be rejected. However even if a number of documents are described collectively, individual documents corresponding to each case are clearly described, the documents should be considered particularized and specified. On the other hand, refusing the execution of the letter of request based on Article 9 of the HCCH Evidence Convention by interpreting the pre-trial discovery procedure as incompatible

with the procedures of domestic law should not be allowed as it may defeat the legislative intent of Article 23 of the HCCH Evidence Convention. Lastly, even if the scope of request is wide, unless it falls under the grounds for refusal of execution as stipulated in the HCCH Evidence Convention and it does not fall within the scope of Article 23 reservation as well, Korea should neither arbitrarily reduce the scope of request nor execute just a part of it.

As for the countermeasures to the U.S. court's pre-trial discovery order according to the FRCP, (i) enacting a blocking statute, (ii) filing for a protective order predicated on the Korean court's decision on the provisional disposition to enjoin the submission of materials, and (iii) concluding a bilateral treaty with the United States have been reviewed. The U.S. court has maintained its position of not considering blocking statues such as France's blocking statute or EU General Data Protection Regulations. In addition, parties or a third party who are required to submit materials under the pre-trial discovery order of a U.S. court will get stuck in a contradictory situation. This is because if they comply with the pre-trial discovery order, they will be sanctioned against violating the blocking statute, whereas if they do not comply with the order, they will face sanctions prescribed by the FRCP. So enacting a blocking statute is not an appropriate countermeasure against the U.S. courts' pre-trial discovery order.

Filing for a protective order to the U.S. court premised on the Korean court's decision on the provisional disposition to enjoin the submission of materials would be a realistic and practicable countermeasure. A party to the lawsuit may apply for an injunction with the Korean court against a third party who has been requested to submit materials in the pre-trial discovery procedure of the U.S. court. After receiving the decision on the provisional disposition by the Korean court, the party could seek a protective order with the U.S. court on such a ground. The party needs to prove the necessity for personal information protection for which the provisional disposition has granted and the difficulties arising from the conflicting legal obligations, rather than the fact that the provisional disposition to enjoin the submission of materials exists.

Since judicial friction arising from pre-trial discovery order under the FRCP is characterized as a dispute that can only be resolved by joint efforts with the United States, it is ultimately desirable for Korea to conclude a bilateral treaty with the United States. When concluding a bilateral treaty, Korea needs to strongly insist that the following contents be inserted into the bilateral treaty. First, in cases to which the HCCH Evidence Convention applies, the method of requesting for examination of evidence stipulated by the HCCH Evidence Convention instead of domestic law should be followed. Second, the submission of materials directly related to the issues of litigation should be requested. Third, the individual documents requested to be submitted in the letter of request must be precisely specified. Last but not least, if the submission of materials according to the pre-trial discovery order is contrary to the Korean domestic law or the decision of the provisional disposition, the protective order should be affirmatively issued in consideration of the difficulty faced by the party who has to comply with the conflicting legal obligations.

Along with this study, it is hoped that studies both on the current state of judicial friction between the United States and Korea arising from pre-trial discovery of United States and Korea's countermeasures thereto would be more actively conducted and accumulated. Furthermore on the basis of such studies, it is expected that international judicial cooperation in civil matters would work better to streamline the investigation of evidence between the United States and Korea.

5

International Jurisdiction for Lawsuits Regarding Contracts and Torts Via the Internet (2023)

Hyo Jung KIM
Professional Researcher

The Internet does not assume a real physical space and has unique characteristics such as non-face-to-face, anonymity, and access from anywhere. Therefore, if legislation and theories on international jurisdiction based on the premise of real space are applied directly to international disputes over the Internet, inappropriate results may occur. Since the Internet transcends geographical limitations, there is a possibility that international jurisdiction will be recognized anywhere in the world. The 2022 full revision of Korean Act on Private International Law (completely revised on January 4, 2022, effective on July 5, 2022, hereinafter 'Revised KOPIL') enhanced legal stability and predictability in determining international jurisdiction by introducing regulations on international judicial jurisdiction. However, even under the Revised KOPIL, it is not clear which country's court has international jurisdiction when resolving an international dispute over the Internet through litigation.

In this study, taking the characteristics of the Internet into account, specific suggestions have been made on how the provisions on international jurisdiction over lawsuits regarding not only contracts concluded via the Internet but also torts committed via the Internet under the Revised KOPIL should be interpreted respectively. This study classified "contracts via the Internet" into "ordinary contracts via the Internet" and "consumer contracts via the Internet", and also "torts via the Internet" into "general torts via the Internet" and "intellectual property infringement via the Internet". This study examined the judgment standards for each international jurisdiction over the categories mentioned above.

This study researched what factors would be considered in determining the international jurisdiction over lawsuits regarding ordinary contracts via the Internet under the Pre-Revised KOPIL through reviewing courts' precedents in which Pre-Revised KOPIL was applied. Next, in determining the international jurisdiction for lawsuits related to ordinary contracts via the Internet under the Revised KOPIL, this study examined Article 41 of the Revised KOPIL, which stipulates special jurisdiction for lawsuits related to ordinary contracts. This study also provided standards for whether a contract falls under a typical contract pursuant to Article 41(1), or other types of contracts pursuant to Article 41(2), and pointed out the differences in applying either Articles 41(1) or Article 41(2). In particular, in case of a contract under Article 41(2) of the Revised KOPIL, interpreting "the place where the obligations that formed the basis of the claim were performed" as the 'location of the server' would infringe on the predictability of the other party of the Internet business operator, while

interpreting it as 'any place with accessibility' would infringes on the predictability of the Internet business operator. Therefore, in consideration of both the position of international treaties and the reasonable predictability of each party, this study suggested an appropriate interpretation that the 'location of the Internet business operator as a debtor' should be regarded as "the place where the obligations that formed the basis of the claim were performed" under Article 41(2) of the Revised KOPIL. Furthermore, when an agreement is made on exclusive international jurisdiction when concluding a ordinary contract over the Internet, Paragraphs 1 and 5 of Article 8 of the Revised KOPIL, do not require "reasonable relationship" between the case and the designated foreign court as a condition for validity of the agreement. Therefore, this study pointed out that when concluding a ordinary contract over the Internet, the effect of the exclusive jurisdiction agreement may be recognized even if the parties agree for a court in a neutral third country unrelated to the case as the court of jurisdiction. In addition, in determining the international jurisdiction for lawsuits related to ordinary contracts over the Internet, the general jurisdiction under Article 3, the special jurisdiction based on the locations of offices or places of business and operating activities under Article 4, and the general principles of Article 2 of the Revised KOPIL could be applied.

Next, in relation to the international jurisdiction over lawsuits regarding consumer contracts via the Internet, this study reviewed Article 42 of the Revised KOPIL on international jurisdiction for consumer contracts, and then looked into the scope of consumer contracts to which this protective jurisdiction applies. Then this study analyzed whether Act on the Regulation of Terms and Conditions and consumer protection-related laws can be applied to international jurisdiction agreements in consumer contracts. In relation to the interpretation of Article 42 of the Revised KOPIL, whether there is a targeted activity of the business operator as defined in Article 42, Paragraph 1, Item 1 of the Revised KOPIL would not be determined by the nature of the site or the subjective intention of the business operator. According to the effect theory, it was suggested that the decision should be made objectively based on the effect that the website had on the consumer's country of habitual residence. In determining whether a business operator has targeted activities, various factors, including country-specific indications such as specific language and currency, operation of a separate domain address for a specific country, should be considered comprehensively. This study also reviewed cases where the exclusive jurisdiction clause included in the terms and conditions presented by the overseas business at the time of concluding a consumer contract through international e-commerce are invalid pursuant to Article 42(3) and Article 8(1) of the Revised KOPIL, and Article 14(1) of the Act on The Regulation of Terms And Conditions.

Regarding international jurisdiction for lawsuits regarding general torts committed on the Internet, this study reviewed Article 44 of the Revised KOPIL, which stipulates special jurisdiction for lawsuits regarding torts. This study researched the precedents of the European Court of Justice(ECJ) and the German Federal Court of Justice(Bundesgerichtshof, BGH) that apply the mosaic theory to the international jurisdiction of lawsuits regarding

infringement of personal rights via the Internet, and discovered that it was appropriate that Article 44 of the Revised KOPIL did not adopt the mosaic theory. Furthermore this study scrutinized the discussion regarding the place of action, place of result, and place of targeting which Article 44 of the Revised KOPIL enumerates as the basis of jurisdiction. The place of action is not the location of the server of the information processing system used by the tortfeasor or the location of the tortfeasor's place of business, but 'the place where the content of the tort was uploaded'. The place of result should be interpreted as 'a place where direct damage was caused to the victim by accessing a posting on the Internet, and a place where a significant portion of the victim's interests were established.' The place of targeting should comprehensively consider various factors, including country-specific indications that the tort was directed to the Republic of Korea. However, the fact that Article 44 of the Revised KOPIL stipulates the place of targeting as a separate jurisdictional basis from the place of action and the place of results redounds in an excessive expansion of jurisdiction by recognizing jurisdiction over 'the place of targeting without results' or the 'place of results without directed activities'. So there is a need to appropriately utilize Article 12 of the Revised KOPIL, which stipulates the principles of forum non conveniens.

Lastly, in relation to international jurisdiction for lawsuits regarding infringement of intellectual property rights via the Internet, this study examined Article 39 of the Revised KOPIL, which stipulates special jurisdiction for lawsuits regarding infringement of intellectual property rights. Article 39 of the Revised KOPIL adopts the mosaic theory in principle by quantitatively limiting jurisdiction unless it is the place of action of the main infringement, and does not require foreseeability of the occurrence of results. In cases of infringement of intellectual property rights via the Internet, the interpretation of the place of action, place of results, and place of targeting is basically the same as the interpretation of those in torts under Article 44 of the Revised KOPIL. However, although infringement of intellectual property rights has the nature of torts, it has special characteristics such as territorial nature, and these special characteristics may affect the interpretation of the jurisdiction of the place of results. In the case of registered intellectual property rights, as a place where the results of intellectual property infringement occur, 'a place where the content of intellectual property infringement is actually accessed and direct damage is caused to the victim' should be interpreted as the 'country of registration of intellectual property rights' due to the territorial nature of intellectual property rights. Since the country where intellectual property rights are registered should be viewed as a place where a significant portion of the victim's interests have already been established, there is no need to separately determine whether it is a place where a significant portion of the victim's interests have been established, as in recognizing the jurisdiction of the place of results under Article 44 of the Revised KOPIL.

Even though there is a lot of theoretical and practical confusion regarding the determination of international jurisdiction for lawsuits related to contracts and torts via the Internet, the prior studies leave much to be desired. It is expected for this study to act as an opportunity to accumulate researches which present standards for determining international

jurisdiction over lawsuits related to contracts and torts on the Internet, thereby enhancing legal stability and predictability of the parties when determining international jurisdiction.

6

International Judicial Interactions: Current Status and Challenges in Korea (2023)

Hyeyoung LEE
Professional Researcher

Since 1982, the Korean judiciary has been actively engaged in efforts to strengthen judges' international competence by initiating overseas training programs for judges, and since the beginning of the twenty-first century, there has been an extensive effort in the Korean judiciary at all levels, including individual judges, courts, and the Supreme Court, to support the development of expertise in foreign judicial systems, case law, and jurisprudence. As a result, there has been a vibrant practice of referencing and researching foreign legal systems and jurisprudence within the Korean judiciary, and Korean judges have also started interacting with foreign judges across borders, both of which have proven to be helpful resources in exploring better directions for judicial resolutions.

This tendency of judicial members of the court to actively engage in cross-border interactions is not unique to Korea. It is a global phenomenon that emerged from the late twentieth century through the early twenty-first century. Even among the Justices of the Supreme Court of the United States, the implications of this new phenomenon have been vehemently contested. Research analyzing the phenomenon of judges from various countries engaging in cross-border exchanges, categorizing them by types, and examining the functions and implications of each type has mainly been conducted within international law and comparative law studies, primarily in North America and Europe.

However, Korean practices have largely remained outside the focus of such studies, which have predominantly concentrated on cases in Western countries. Even within the Korean academic community, there is hardly any study that examines the current status of Korean judges actively engaging in cross-border interactions. The lack of such research not only prevents proper recognition and evaluation of comparative legal approaches and efforts toward internationalization of the Korean judiciary, but it may also obstruct the possibility of systematic methodological reflection on the achievements and realities of international judicial interactions in Korea. Without a structured chance for critical self-assessment, this could potentially lead to Korean judges participating in judicial interactions out of inertia. With this in mind, this research aims to introduce and analyze the characteristics of international judicial interactions in which the Korean judiciary and judges have been involved and to provide judicial policy recommendations to assist the Korean judiciary in advancing international judicial interactions in a progressive direction.

With this purpose in mind, this research particularly highlights that Korea has a culture of being relatively hesitant to expressly cite foreign judgments or instruments in judgments

and decisions, even if they were referred to during the decision-making process. The Korean judiciary, on the other hand, stands out for its distinct dedication to providing institutional support, both in terms of specialist personnel and institutional backing, to strengthen judges' expertise in other judicial systems and jurisprudence. Furthermore, the Korean judiciary has actively established various mechanisms to assist judges in gaining experience through overseas training and assignments, fostering not only the international competence of Korean judges but also facilitating their participation in international judicial interactions to contribute to the international development of jurisprudence.

This research, in particular, analyzes the current state of international judicial exchanges unique to Korea. It takes into consideration factors such as the utilization of specialized experts and institutional mechanisms to enhance comparative and international law expertise within the Korean judiciary, the system of overseas training and foreign assignment for Korean judges, Korean judges' participation in international organizations, and the state of high-level international judicial exchanges by the Chief Justice and the Supreme Court. Based on this analysis, this research seeks to determine whether there are any factors that may impede the good functions of international judicial exchanges in which Korean courts and judges have engaged, and by doing so, ultimately to provide judicial policy recommendations for a more constructive and beneficial direction.

In a context where research on international judicial exchanges undertaken by Korean courts and judges is scarce, it is hoped that this study will serve as a foundation for future research and further development in this area.

X Labor

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1

Research on the Improvement of the Labor Disputes Settlement Procedure in Korea (2019)

Jonghoon LEE
Judge Researcher

Labor disputes have many unique characteristics that distinguish them from ordinary civil disputes. One of them is the existence of a clear imbalance of power between workers in economically and socially inferior positions and employers in relatively superior positions.

Thus, labor disputes should be subject to labor law, which are distinct from ordinary civil law, and special procedures are necessary to solve them properly. Currently the labor dispute settlement procedure of Korea is dualized into the Labor Relations Commission, which is an administrative institution, and the court. The lack of professionality and fairness of two bodies, the overlapping of procedures caused by the dualization of the problem solving system and the delay in the process of dispute settlement are pointed out as serious problems.

To address these problems, it is necessary to unify the judgment body on labor cases by establishing the Labor Court, a specialized court that can efficiently implement the special procedure applied to labor cases, the placement of professional personnel including career judges specialized in labor cases and the participation of lay judges that represents workers and employers in trials.

As for the composition of the panels in the Labor Court, the form in which career judges can hear the opinions of lay judges, but need not be bound by their opinions is acceptable as long as Article 27 paragraph 1 of the Constitution is not amended. In addition, it is desirable for the Labor Relations Commission to take charge of pre-trial conciliation as a mandatory procedure after the establishment of the Labor Court.

The enactment of relevant law by the National Assembly is essential in order to achieve the establishment of the Labor Court and the unification of the labor disputes settlement procedures. But it cannot be easily accomplished in a short time because the positions of numerous stakeholders related to labor issues are sharply divided and conflicted. Therefore, the Labor Relations Commission should be improved by enhancing its professionalism and fairness as well as strengthening its hearing system for judgment until the Labor Court is introduced.

Recently, demands have been raised to expand the system in which citizens can participate in trials as a way to boost public trust in the judiciary. At this point, the introduction of the Labor Court and the lay judge system therein could not only serve as

an avenue to enhance the professionality and fairness of trials by reflecting the opinions of workers and employers in the course of the trials of labor cases, but also serve as an important turning point to realize the current task of citizens' participation in the justice system. To introduce the Labor Court, I expect an active communication among the labor, the management, the legal profession and the other interested parties, based on which we can reach a social consensus.

2

Ratification of the ILO Fundamental Conventions on Freedom of Association and Challenges to Collective Labour Law in Korea (2022)

Donghyeon KIM / Hyeyoung LEE
Senior Judge Researcher / Professional Researcher

On April 20, 2021, Korea deposited its instrument of ratification for the fundamental Conventions of the International Labour Organization (ILO) on freedom of association (Nos. 87 and 98), which will enter into force on April 20, 2022. Since the ratified Conventions are directly incorporated into domestic law under Korea's Constitution, this ratification is expected to bring about a major change in the field of collective labour law in Korea. A particularly important change is that domestic judges are now required to have a deep understanding of how to interpret Korea's collective labour laws in a way that is compatible with international obligations under the ILO Conventions on freedom of association. Domestic judges must accept that international labour standards are now a part of Korean labour laws that are directly applied in daily trials, or, more precisely, must recognize that Korean labour laws are a part of a larger international labour law system. This research is, therefore, intended to provide readers with an important reference for guiding how the ILO fundamental Conventions on freedom of association should be interpreted and applied, considering their relationship with collective labour law in Korea.

With this purpose in mind, this research seeks to provide an overview of the ILO and its labour standards that are backed by its supervisory system comprised of independent legal experts and tripartite bodies. In particular, this research provides an article-by-article annotation of the ILO No. 87 and No. 98 Conventions. In order to enhance readers' understanding of each provision of these Conventions, this research introduces examples of foreign courts' judgments that directly applied provisions of these Conventions, and also briefly identifies Korea's collective labour-related legal systems and practices that may be problematic in implementing obligations under each provision of the Conventions.

This research then examines the legal consequences of ratifying the ILO Conventions. One of the most important consequences to follow in the ILO system is that Korea, as a ratifying state, becomes subject to the strengthened ILO's supervisory system or mechanism that is designed to help ensure that state parties implement the conventions they ratify. In particular, Korea's periodic reports on the measures it has taken to implement the provisions of the ratified Conventions will be comprehensively and regularly reviewed by the Committee of Experts on the Application of Conventions and Recommendations. Furthermore, the ILO's special supervisory procedures that are based on the submission of a representation (ILO Constitution, art. 24) or complaint (ILO Constitution, art. 26) become applicable. Among these, it is particularly significant that a question as to whether

Korea's law and practice in matters concerning freedom of association are in line with the ILO standards could be referred to the Commission of Inquiry, the ILO's highest-level investigative procedure. The Commission of Inquiry's recommendations are legally binding upon states, and the states subject to the complaint could challenge the recommendations before the International Court of Justice. Moreover, as more of Korea's Free Trade Agreements (FTAs) include provisions to comply with the ILO standards on freedom of association, it is more likely that Korea may become involved in trade disputes if its laws and practices are not in line with ILO standards.

In addition, this research examines the relationship between the ILO Conventions and national legislation and reviews ways for domestic judges to resolve inevitable clashes between them. In this regard, this research emphasizes that the interpretations of the ILO supervisory bodies on the ILO Conventions are authoritative. This research then reviews ways to resolve conflicts between the interpretations of the ILO supervisory bodies on the Conventions and the interpretations of domestic courts on the relevant national legislation. In a situation where courts could interpret national legislation in a way that is in line with legal obligations under the Conventions, courts are required to do so to prevent the Korean government from violating international obligations. If there is, however, an evident incompatibility between the Conventions and domestic legislation that cannot be reconciled by means of interpretation, courts might want to consider resolving the conflicts by applying the principle of lex posterior or lex specialis. In such a situation, however, judges are required to keep in mind that preferential application of domestic laws that are inconsistent with the Conventions would be contrary to the Constitutional principle of respect for international law. Alternatively, courts could consider either setting aside the application of domestic laws that are less favourable to workers by opting to apply the Conventions directly, or requesting adjudication by the Constitutional Court as to the constitutionality of the legislation as a violation of a ratified treaty may be an important indicator of the unconstitutionality of the legislation. Lastly, even in a case in which courts decide to apply domestic law that is inconsistent with international obligations by setting aside an application of the Conventions for whatever reason, it cannot be overemphasized that courts will always have the chance in their judgments to draw legislators' attention to the need to bring domestic legislation in line with international obligations under the Conventions.

Based on the above understanding, this research finally reviews long-discussed issues of collective labour laws regarding which interpretive challenges may arise following the ratification of the ILO fundamental Conventions on freedom of association. The issues that are expected to change their interpretations in a direction consistent with international obligations are as follows: the scope of "workers" as subjects of the right to organize under the Trade Union and Labour Relations Adjustment Act, public officials' right to organize, subcontracted workers' right to collective bargaining, the prohibition of industrial action by public officials and teachers, laws concerning essential public-business, purposes and types of industrial action, emergency arbitration and compulsory arbitration, charging peaceful strikers with obstruction of business, and the prohibition of political activities by public

officials' unions and teachers' unions.

Certain labour rights, such as freedom of association, are not merely rights in labour contracts, but are recognized as fundamental human rights. This research hopes that the ratification of the ILO fundamental conventions will not only bring Korea's law and practice in line with international standards, but also serve as a chance for Korea to develop into a country that leads international labour standards.

XI Registration

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1

A Study on the Development of the Current Dual Real Estate Disclosure System (2014)

Eun Sang YANG
Judge Researcher

The purpose of this research is to analyze and evaluate the current state of Korea's dual real estate records system wherein the judiciary branch is in charge of real estate registration system and the executive branch is in charge of cadastral system, come up with problems to be solved, and propose practical solutions.

Chapter 2, after giving an overview of the history, legal sources of law, basic principles etc. of the real estate registration system and the cadastral system in Korea, evaluates the current system and identifies the problems which need to be addressed.

Chapter 3, focussing on Germany and Japan – two countries with the greatest impact on the formation of Korea's real estate records system – reviews the current state of the real estate records system of foreign countries and discussions on integration of their real estate registration system and cadastral system.

After proposing development directions and goals of the real estate records system in Korea, Chapter 4 points to the problems and limitations of approaches to integrate the register book and the cadastre, and including information of the register book in the comprehensive real estate register recently pushed by the executive branch. Since the aforesaid method that brings about big changes in the current system not only requires a large budget but is problematic (e.g. causing inconvenience and confusion to citizens), this research argues that exploring methods that can solve problems and supplement the current system better serves the development directions and goals of Korea's real estate records system. From this perspective, legislative measures such as amendment of the Building Act and technical measures such as computer system linking between the register book and the cadastre were proposed as the methods of improving the current real estate records system. Such methods will solve problems and improve the current real estate records system, i.e. discrepancies between the register book and the cadastre and inconveniences of citizens' and inefficiency of work due to dual procedure of the registration system and the cadastral system, argues this research.

2

Research on Improving the Registration System of Real Property in the Information-oriented Society (2015)

Sang Cheol KIM
Judge Researcher

Every year more than 10 million real properties are registered, and in doing so, a vast amount of information is stored. In this situation, our country's real property registration system should be changed in accordance with the knowledge and information-oriented society. It is time for the court responsible for registration to make a policy on what kinds of information should be provided, and in which way, to the transaction parties in order to promote safe and swift transaction of real property.

In practice, there is a severe asymmetric information between trading partners that often infringes substantially on the freedom of certain parties to make decisions about transactions of real property. To promote safety and swiftness in transaction, it is necessary that the court provide information containing significant implications for each transaction to all parties that might not be in the know. The information to be provided includes information on the registry, in addition to information on the contract, on the certification of the family and the date moved in, on the concerned tax, on the resident registration, and on the registration of guardianship. Property rights of the people would be strongly guaranteed through the elimination of the problem of asymmetric information between trading partners.

Until registration is complete, the purchaser is not secure. To protect the purchaser in this unstable state, it is necessary that the court manage information about purchase contract and make an official pre-notice (like a caveat in Australia) about the contract, upon the application of the purchaser. It will be effective to operate the official pre-notice with the SMS Alert Service system. Then the purchaser could be informed immediately about whether the seller sells the real property to another person, sets up a mortgage.

In practice, the instrument or document are returned to the applicant for registration after registration is complete, but the instrument or document ensure that the registration represents the substantive rights. Therefore, if the instrument or document are stored permanently with an electronic device, then any mistakes in the registration can be immediately rectified and the party responsible for improper registration can be revealed. In addition, people can easily get various information related to registration, the administrative agency can check whether the instrument or document represents the substantive rights or not through a mutual exchange of information with the registrar.

The adoption of the indefeasibility of title is not a matter of legal argument but a matter of legal policy in which either legal stability or the safety of the transaction is

more important. In order to make a decision, it is necessary to evaluate the current state of incorrect registration with an empirical analysis and analyze the institutional conditions protecting a proprietor who has suffered a loss of real property.

If a system to indemnify loss or damage arising from mistakes or misfeasance of the registrar is adopted, indemnity funds will be also important. It is appropriate that only people who apply for registration bear the expense for spreading the risk derived from the indemnity. Then, the registration fee has the insurance commission to prepare for the risk of loss or damage. Therefore, the registration fee should be calculated according to the value of the real property, not a fixed price.

Each country has their own registration system based on historical and cultural background. We, Koreans have achieved remarkable progress in science, especially in information and communications technology. We, therefore, should prepare a registration system befitting advanced information and communications technology.

This article proposed such policies as "Recording the instrument or document in the computer system," "Providing information which contains significant implications for a transaction to all parties that might not be in the know," and "Making an official pre-notice (like a caveat in Australia), upon the application of the purchaser, to protect them in their unstable state." It is expected that these policies will offer a rational solution as to how the registration system should be structured in the knowledge and information-oriented society.

3

Measures to Establish a Land Registration System in North Korea after the Reunification of the Korean Peninsula (2017)

Seyong OH
Judge Researcher

Originally there existed but one system of the land ownership and land registration system throughout the whole Korean peninsula, but since Korea was divided into two areas after the 8·15 independence, North Korea has had completely different land ownership and land registration system from that of South Korea. How to reestablish the land registration system in North Korea after the reunification of the Korean peninsula is a matter of integrating the different land registration systems of South and North Korea into one. For this, we have to be prepared enough in advance.

In this respect, this research report presents the detailed measures to establish the land registration system in North Korea area after the reunification of Korea.

First, the current land ownership and land registration system in both South and North Korea area should be understood. Chapter 2 introduces the histories and current situations of land system in South and North Korea, and chapter 3 compares the difference of land registration systems in South and North Korea after taking a look at the histories and current situations of both countries.

Next, chapter 4 and 5 present the general principles that can be assumed in the process of establishing a new land registration system after the reunification as well as case studies in other several countries. Chapter 5, in particular, classifies the cases of 8 countries into 3 types, such as the country reunified from two separate entities, the country where planned economy system was transformed to capitalistic market economy system and the country where planned economy system was transformed to socialistic market economy system. And by reviewing the process of restructuring the land registration system in these countries, we can get some useful implications.

Then, chapter 6 refers to the special circumstances of the Korean peninsula and some considerations in case of establishing the land registration system in the reunified Korea.

Finally, chapter 7 deals with the specific procedures and related issues for restructing the land registration system in North Korea area after the reunification. In this chapter, the specific action plans to establish the land registration system are discussed in details such as the integration of cadastral system, the decision of registration details, the improvement of the registration application procedure, and the installation of registry offices and strengthening the competence of registration officers. This research attempts to suggest a roadmap to quickly establish the land registration system in North Korea after the

reunification and solve the related issues inevitably arising in this process.

This research is significant in terms of providing the practical action plan for a new land registration system in preparation for the reunification of Korea. Hopefully this research can serve as a stepping stone for subsequent researches in the future.

4

A Study on the Methods of Public Disclosure of Unincorporated Associations (2019)

Dongsun LEE
Research officer

The purpose of this study is to examine the current status of unincorporated associations that do not have capacity of enjoyment of rights, but in reality, act as a subject of rights. This study compares and reviews the cases of Germany, France, and Japan, and explores the methods of public disclosure of unincorporated associations to address issues regarding unincorporated associations.

In this study, two methods of public disclosure of an unincorporated association—public disclosure by (1) registration of information on the association in the corporate register, premised on incorporation of the unincorporated association and by (2) entry of information on the unincorporated association, obtained in the application process for an identification number of the association for real estate registration or other purposes, in a new kind of register on unincorporated associations—are examined. Following a thorough examination, the second method, that is considered superior to the first one in terms of its feasibility and effectiveness, is presented as the most proper measure. According to the method, for an unincorporated association to apply for real estate registration, its articles of association or resolutions at a general meeting of the members of the association must be notarized—by a notary public who observed in person the general meeting—in order to ensure the substantiality of the unincorporated association and the veracity of its representative(s). A registration officer must enter information on an unincorporated association in a register on unincorporated associations—separate from the real estate register in the case of real estate registration—detailing the name of the association, office location, and matters related to its representative(s).

If the method of public disclosure proposed in this study is mandated by policy, then all unincorporated associations holding real estate will be disclosed through the register mentioned above. Furthermore, in the context of litigation and non-contentious procedure cases as well as other transactions, an "unincorporated association registration certificate" will be utilized to verify the substantiality of the body and/or the veracity of its legal representative(s), thereby further strengthening the transaction security involving unincorporated associations. It is hoped that this study will contribute to facilitating future discussions on the methods of public disclosure of unincorporated associations.

5

Study on the Commercial Registration Systems of Vietnam·Cambodia·Laos (2020)

Hokyeong JEONG
Research Officer

Commercial registration or enterprise registration refers to a system that discloses matters, regarding the main contents of a merchant or an enterprise, required to be registered; such a registration system not only creates certain legal effects, such as granting legal capacity to corporations or enterprises, but also helps to facilitate convenient and safe economic activities for the other parties of transactions.

In a rapidly changing modern society, the advancement of a commercial registration system, which is the backbone of corporate activities, makes the process of establishing an enterprise quick, accurate, and convenient and also facilitates investment in enterprises, thus ultimately making the driving force for the economic development of a country.

In order to advance the commercial registration system, notwithstanding it is necessary to research the registration systems of advanced economies, commercial registration systems in developing countries such as Vietnam, Cambodia, and Laos should also be studied. Such researches, however, should be accompanied by in-depth exchange of opinions in association with registration practices and the extensive comparison and analysis of mutual registration systems through reciprocal exchange of commercial registration systems between Korea and foreign countries.

Vietnam's enterprise registration system, based on the Law on Enterprises, is composed of (i) registration for Private Enterprises, (ii) registration for Limited Liability Companies, (iii) registration for Joint Stock Companies, (iv) registration for Partnerships, and (v) registration for Household Businesses. In case of Vietnam, it has a well-established registration statutes compared to Cambodia and Laos; having particular features that the registered matters are disclosed to the public at large free of charge on the website of the enterprise registration portal operated by the Ministry of Planning and Investment, and it is characterized by emphasizing registration-related cooperation obligations with other national authorities, such as the Ministry of Planning and Investment, the Ministry of Finance, and the Ministry of Public Security, which have jurisdiction over the enterprise registrations.

Cambodia's commercial registration system, based on the Law on Commercial Enterprises and the Law on Commercial Rules and Commercial Register, is composed of (i) registration for Sole Proprietorships, (ii) registration for Partnerships, (iii) registration for Limited Companies, (iv) registration for Foreign Companies, and (v) registration for Branches of Cambodian Companies. Cambodia has integrated all commercial registration

applications into the electronic applications through the online commercial registration system on the Ministry of Commerce's website, and one of its characteristics is that the language of the homepage can be selected between Khmer and English for foreign users.

Laos' enterprise registration system, based on the Enterprise Law, consists of (i) registration for Individual Enterprises, (ii) registration for Partnerships, (iii) registration for Limited Companies, and (iv) registration for Public Companies. Laos provides statistics on business registration free of charge from the national business database of the Ministry of Industry and Commerce, having some features that Laos has yet to provide an electronic registration application system. Korea has just begun to provide the registered statistical data through the website of "https://data.iros.go.kr/" since January of 2020. With a view to the fact that Laos has been operating such a system earlier than Korea, it was found that the study of commercial registration systems in developing countries can also help improve our registration system.

The mutual exchange of commercial registration systems with Vietnam, Cambodia, and Laos can be would broadly classified into (1) mutual exchange for supporting the improvement of laws related to commercial registration and the construction of registration system, and (2) mutual exchange of human resources. The mutual exchange of human resources can be divided into (i) exchange of legal experts related to commercial registration, (ii) exchange of experts on commercial registration systems, and (iii) exchange of staff and personnel in practice of commercial registration. Korea has been to some extent assisted in the advancement of its commercial registration system through the Korea-Japan Registration Officers Mutual Training Program with Japan, an economically advanced country, running from 1999 to date. To significantly develop the registration system in the future and furthermore, and further to achieve the world's most renowned registration system, Korea would also be required to expand exchanges with developing countries.

I hope that this study serves as useful basic data for the mutual exchange of commercial registration systems with Vietnam, Cambodia, and Laos, and that it will become a cornerstone towards expanding the mutual exchange of all registration systems including the comparative law research on commercial registration systems and the real estate registration systems between Korea and developing countries such as Thailand, Philippines, Malaysia, Myanmar, Mongolia, Kazakhstan, and Uzbekistan.

6

Research on Ways to Improve Objection Procedure against a Registrar's Disposition (2020)

Hokyeong JEONG
Research Officer

The case regarding an objection against a registrar's disposition is one of the representative non-contentious litigation cases where registration and trial would inevitably intertwined. The registration system works as an integral part of people's lives and possesses an area that bears a significant effect on them, nevertheless scholarly research on it is rarely active. In particular, it is hard to find some relevant thesis or research works that have studied measures to improve the procedure on the objection against a registrar's disposition.

Therefore, in order to objectively identify the problems with the objection procedure against a registrar's disposition and to derive the most efficient improvement measure, this research has attempted to conduct a wide-range survey and written interview with court officials in general service such as judges and registrars, the attorneys on the Korea Bar Association, and the certified judicial scriveners on the Korean Association of Beommusa Lawyer and thereby analyzed results of them. Thereafter, the analyzed results were comparatively evaluated with the current status of the cases dealing with an objection against a registrar's disposition. As a result, preventing the prolonged objection procedure and shortening the objection procedure period were found to be the most urgent and important tasks in improving the objection procedure.

One of the most ensuring methods to solve this task is to enlarge more judges for assigning them to deal with the cases for the objection against a registrar's disposition. However, to some extent it is virtually impractical to increase the number of assigned judges for such objection cases, we would have to find an alternative method to efficiently operate the current judicial workforce rather than increase the number of judges. Although it is no easy task to find such an alternative, some of the attorneys on the Korean Bar Association and the certified judicial scriveners on the Korean Association of Beommusa Lawyer suggested a remedial measure by which Rechtspfleger could be authorized to handle the cases in regard to an objection against a registrar's disposition. As verified through the handling period of the case of renunciation of inheritance and the qualified acceptance of inheritance, adopting the Rechtspfleger system for the objection procedure against a registrar's disposition is expected to shorten its period.

Since the registration would hardly be properly perform its function of public notice if the contents of register entries on the application for registration are to be changed before the completion of registration subsequent to registration application, the act of registration requires, among other things, its speed. Reminding an attorney on the Korea Bar Association

saying that a prolonged objection procedure makes the procedure itself to be felt as useless, the issue of the period for the objection procedure must be improved without fail.

It is hoped that adopting the Rechtspfleger system, particularly dedicating to registration affairs, in the objection procedure against a registrar's disposition will not only shorten the period for the objection procedure, but also solidify the specialization of registration and furthermore reduce the judges' workload, thereby contributing to improving the judicial service as a whole.

7

Study on the Real Estate Registration Systems of Vietnam·Laos·Mongolia (2022)

Hokyeong JEONG
Research Officer

The real estate registration system is a recording system that aims to publicly announce the registration matters of real estate as prescribed by the relevant laws. This system performs the function of promoting active transactions of real estate, which is one of the important property rights, and ensuring the safety of transactions. The real estate registration systems of foreign countries have as much to do with their economic activities as their commercial registration systems do. This study on the real estate registration systems of Vietnam, Laos and Mongolia is conducive to the protection of property rights of Korean people who invest in real estate located in those countries.

Following the "Study on the Commercial Registration Systems of Vietnam·Cambodia·Laos" by the Judicial Policy Research Institute in 2020, this study on the real estate registration systems of Vietnam, Laos and Mongolia falls into the "series on similar themes" proposed as a way of diversifying research projects. This study is instrumental in understanding the registration systems of real estate in Korea, Vietnam, Laos, and Mongolia and improving these systems, serving as stepping stones for bilateral judicial exchanges among these countries as well as securing basic materials on the methodologies and implications of supporting the real estate registration systems.

The main contents of the real estate registration systems of Vietnam, Laos and Mongolia are as follows. Through a review of the real estate registration systems of Vietnam and Laos, where the register and ledger are unified, it was found that the unifying system of the register and the ledger could not guarantee the efficiency, swiftness, and accuracy of the registration. In addition, anyone in Korea can peruse registration record by paying fees, whereas in Vietnam, Laos, and Mongolia, access to registration record is considerably limited. Unlike Korea, which uses a certificate of registered matters and information on the completion of registration, the three countries have systems that use Land title. Because Vietnam and Laos are clinging to the socialist system, land ownership is not acknowledged. In contrast, former socialist Mongolia partially recognizes land ownership of individuals after the transition to democracy, enabling procedural completion of land ownership registration. Such specificity of the Mongolian registration system of real estate can be a candidate for solving potential problems in our registration system of real estate after Korean reunification. Laos does not have a separate registration system of buildings as opposed to Vietnam and Mongolia. Concerning the right to the use of land, foreigners in Laos used to be prohibited from the registration of building sites for condominiums. But with the revision of the Land Law in

2019, it became possible to register "sites for condominiums" in the name of foreigners for a maximum of 50 years. Land cannot be alienated from a building when making registration in Vietnam and Laos. On the other hand, community housing in Mongolia is exceptional in that the owners of such sectioned buildings have the right to register their exclusive possessions.

The Court Officials Training Institute of the Supreme Court of Korea is pushing ahead with international training projects on the registration systems, submitting project proposals targeting developing countries which are apt beneficiaries of official development assistance (ODA) as "the 2023 KOICA Projects Proposed by the Government Departments." However, Japan actively pursues research and exchanges regarding the registration systems of developing countries, with the Japan International Cooperation Agency (JICA) having capital exceeding 8 trillion yen as the head of such efforts in collaboration with Japan's Ministries of Justice and Foreign Affairs. Comparison with this scale leads to strong calls for the expansion of our minor support and exchange regarding the registration systems in developing countries. Korea's status has already been unanimously raised to a developed nation by the United Nations Conference on Trade and Development (UNCTAD). Korea is the first country to upgrade its status from a developing nation to a developed nation since the establishment of the UNCTAD in 1964. As the sweeping Korean wave demonstrates, Korea is joining the ranks of advanced countries in many fields beyond the economy. The registration system should not be left behind. If we actively support developing countries through advanced legislation and system regarding registration, mutually exchange the various registration systems in a systematic and professional way, and conduct on-site in-depth research on registration practice using a comparative legal approach, the Korean registration system will certainly lead the world in the future.

It is hoped that this study can be of help to the mutual exchange of registration systems with Vietnam, Laos and Mongolia, laying the cornerstone for such expansion with many more countries and continued comparative legal research.

8

A Study on the Improvement Methods for the Registration (2023)

- Related Civil Petition Guide System -

Myeong-hun SHIN
Research Officer

A registry office is one of the field departments most visited by civil petitioners in a Korean court. Court officials working at registry offices have continued to complain about civil petition guides. Therefore, in order to identify problems that occur in handling registration-related civil petitions on sites and find ways to improve them, we listened to the opinions of employees who have experience working in registry offices and mainly cited or referenced registration-related petitions received on the 'Opinions to the Court (www.scourt.go.kr/portal/advice/AdviceList.work)' bulletin board of the Korean Court website and the results of a survey conducted by the Ministry of Court Administration for improving the registration-related civil petition counseling system.

As a result, the lack of understanding of the specificity of registration work by civil petitioners, difference in perception between civil petition officials and civil petitioners regarding the limitations of registration application procedure guides, the absence of more specific standards for the limitations of registration application procedure guides, the lack of qualifications (kind attitude, knowledge of registration, etc.) of civil petition officials, courts' poor response to some civil petitioners who make inappropriate words and behavior, and the lack of a system to supplement the guides provided by the staff are identified as common causes of problems. Since among these, the absence of more specific standards for the limitations of registration application procedure guides stands as a prerequisite problem to other problems, we first presented ways to specify the limitations of the registration application procedure guides.

In order to explain it to civil petitioners and obtain their understanding that if a civil petitioner feels somewhat uncomfortable due to the unfulfillment of expectations in spite of the standardized guides pursuant to the specified criteria, this is caused from the limitations of the registration application procedure guide due to the specificity of the registration work, it is important for public officials with expertise in registration to kindly respond to petitioners. Therefore, we proposed a "method for friendly response and professionalism of officials for guiding the registration application procedure."

For problems such as the lack of a system to supplement the guides provided by the staff and courts' poor response to some civil petitioners who make inappropriate words and behavior in the current civil petition counseling system, we searched for methods such as the expansion of the registration-related civil petition counselor system, registration-related civil petition counseling through cooperation with judicial scrivener groups, an increase in the

number of registration application procedure guides, an advance reservation system for the registration application procedure guides, registration-related civil petition fees, registration application procedure guides using chatbots, improvement in filling-out the real estate registration application form, and cooperation in dealing with civil petitions by petitioners with psychological disorders.

There are many opinions that, in the long term, court officials should not guide civil petitions at registry offices. However, if registry offices do not guide the registration application process, it may cause not only changes in the registry office work system but also great inconvenience to civil petitioners compared to the current civil petition guide method, so careful review is required. Therefore, alternatives should be sought along with the progress of the future registration system, such as the introduction of an electronic wide-area registration system that creates video conference rooms (registration application procedure guide offices) at registry offices to guide registration application procedures so that it can be connected with the integrated civil petition counseling center (by region) or the civil petition officials of the organization for registration-related civil petition counseling installed at base registry offices, the reorganization of registry offices, and a reduction in the number of visit application cases by activating electronic application.

XII Execution

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1

Study on the Recognition and Enforcement of Foreign Judgments (2019)

Hyo Jung KIM / Jiyong JANG
Professional Researcher / Judge Researcher

Resolving the disputes arising from the legal relationship involving the foreign elements through litigation, there are no other choices but to bring an action to have a judgment in one state's national court. Delivering a judgment is a sovereign act to exercise the judicial power of a state where a court that gives a judgment sits (hereinafter "state of origin"). In principle a judgment has an effect only inside the territory of a state of origin, so that in order for such a judgment to have an effect in another state the judgment must be recognised and enforced according to the procedure that the other state provides.

In this study we have reviewed all the issues raised in the theoretical and practical matters when dealing the recognition and enforcement of foreign judgments in the Korean legal system, and thereby exploring the problems arising from the existing system, and finally setting forth the measures to further the betterment of its system. The purpose of the recognition and enforcement of foreign judgments lies in providing the 'expedient redress for the infringement of one's rights' through both the finality of dispute resolution and the prevention of the conflict and inconsistency of the multinational legal relationships, so we have sought the measures to develop the effective and efficient system bearing in mind such a purpose and focusing on the interpretation thereof (lege ferenda) and the prospective legislation thereon (*lege lata*).

In that light we suggest the positive introduction of the following constructions. First, we have determined the five conceptual elements for meeting the requirements of the recognition of 'the final judgements rendered by foreign courts or the other judicial decisions having the same force as final judgments' prescribed in the Article 217(1) of Korean Civil Procedure Act, and providing the practical guidelines on the actual recognition cases by putting the standard into the cases in question. Second, we cautiously suggest the abolition of the reasonable relevance requirement settled by the case law of the Supreme Court of Korea in reviewing the validity of the exclusive jurisdictional agreement in light of both the legal stability and the parties' foreseeability. Third, we set forth our opinion that the supplemental service of process will have to be viewed as legitimate when reviewing the interpretation of the service requirement in the recognition of the foreign judgment on the grounds that the supplemental service shall not be deemed similar to the notice by publication in terms of guaranteeing the opportunity to be heard albeit the rejection by the Supreme Court as illegitimate. Fourth, we elucidate our position that the limitation and restriction on the excessive compensatory damages based on the public policy such as a sound morals or

other social order stipulated in the Article 217(1)(iii) will not be advisable on account of the prohibition against the review on the substantive matters. Fifth, we indicate that in reviewing the reciprocity requirement, the existence of the precedents shall not be taken into consideration, and in cases where the recognition and enforcement of the judgment rendered in the federal nation is at hand, the comparative analysis on the recognition requirements between the each state concerned in the federal nation and Korea shall be needed. And we have researched such a variety of countries as the U.S., Japan, Germany, China, U.K., Canada, Australia, Vietnam by reviewing on where or not the recognition clauses of such countries meet the reciprocity requirement of Korea in order to provide the practical guidance in adjudicating the recognition cases before the courts in Korea.

On the other hand we put forward with several legislative amendments as follows. First, we expect the speedy passage of Entire Amendment Bill of the Private International Act, 2018 still pending at the parliament in Korea, so that the indirect jurisdiction requirements shall be reviewed based on the precise regulations stipulated in the pertinent code. Second, we come forward with the opinion that the reciprocity requirement might well be abolished on the ground of the impropriety of forbidding the expeditious relief of the inflicted individual right on account of the principle of retribution, as well as aiming at preventing the occurrence of the disruptive legal relationships. Third, we suggest the need for the amendment to the Article 27 of the Civil Execution Act by adding Article 27(3) to the effect that the court shall be entitled to give a partial enforcement on the legal base. Fourth, we point out the need for the legislative measure in order for the foreign divorce judgments to have the mandatory preliminary review by the domestic court in Korea in the course of adjudicating the fulfillment of recognition requirements.

Furthermore we explore the main contents of the “Convention on Choice of Court Agreements (Hague Choice of Court Convention)”, 2005, and the “Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgments Convention)”, 2019, and analyze the merits/demerits or considerations in case that Korea would join the both Conventions, and give our recommendations for the necessity to participate in the efforts of the international community attempting to enhance the foreseeability of the parties through the established uniform regulations concerning the recognition and enforcement of the foreign judgments. In addition we take a summarized review on the “Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)”, 1958 and the “United Nations Convention on the International Settlement Agreements Resulting from Mediation (Singapore Convention)”, 2018 both dealing with the recognition and enforcement of the arbitral awards or international settlement agreements from mediation respectively.

In dealing with the recognition and enforcement of foreign judgments system there arise a lot of problems with respect to the theoretical and practical matters, despite to date we have yet to study much on the concrete improvements in that regard. We expect our research will contribute to the developments of the recognition and enforcement of foreign judgments

system by providing some useful guidance by directing the practice and legislation, and in the afterwards it will further the accumulation of relevant studies to function as complying with the original legislative purpose of redressing the infringements of individual rights arising from the legal relationships involving the foreign elements.

2

A Study on Methods to Ensure the Effectiveness of Compulsory Execution (2020)

- Focusing on the System of Investigation of Debtor's Property and the System of Indirect Compulsory Performance -

Kyungoh KIM
Research Officer

Public expectations about the court's remedy for the breach of individual rights have been growing in recent days. It will be insufficient for the courts to satisfy public needs if the courts' rulings are not implemented fully and completely in people's lives even if they proceed with a prompt and fair trial to deliver a judgment on the disputes between the parties.

In this vein, it can be said that establishing appropriate system in order to secure the effectiveness of compulsory execution through civil enforcement would be an intergral part of such a remedial process. For this purpose, our law provides a system of disclosure of enforceable property and a system of enforceable property inquiry to enhance the effectiveness and function of compulsory execution promptly and adequately, and operates a system of of defaulting debtor list to be aimed at indirectly enforcing the performance of his/her liability by disclosing the personal information of unfaithful debtors, while facilitating the inquiry into the debtor's credit standing as well as ensuring transactional safety ultimately.

It can be positively evaluated that in the overall context, these kinds of systems have made a great contribution to the effective recovery of judgment creditor's claim as well as to the stable establishment of indirect compulsory performance system for judgment debtor's obligation. However, the system have also revealed some insufficiency in their management to date. In our study, therefore, we examined the systems of Japan, the USA, Germany, France, and China to get some implications and suggestions for the improvement of our system, through which we consequently have reached the following reform methods.

First, as regards the system of disclosure of enforceable property, we have presented the need for improvements concerning the enlargement of kinds of enforcement title and scope of enforceable property entitled to apply for such post-judgment disclosure, along with court-ordered confinement procedure for the system.

Next, as regards the system of defaulting debtor list, we have suggested a method by which the judgment creditor is able to persue the defaulting debtor list at any court regardless of the competent having jurisdiction on debtor, with the development of integrated on-line management, inspection and output system for the defaulting debtor list.

Finally, as regards the system of enforceable property inquiry, we have suggested a

method for the introduction of a system to enable the creditor to inquire into the workplace or place of business when investigating the debtor's salary, and futher a method for theintroduction of a blanket inquiry system to enable the creditor to look into the debtor's financial assets comprehensively without specifying a particular financial institution. Such a blanket financial assets inquiry system seems a rather too early, but with the help of the continuing development of the IT environment and the resulting creation of the social environment, the introduction of such a system will be expected to be a very convenient means for creditors.

Currently various methods designing to enhance the judicial reliability have been raised. Building a system for court rulings on civil disputes to be implemented faithfully will give a significant influence on the people's confidence on the judiciary. We hope that this report will contribute to the concerted efforts to reform the judicial system in which the full-blown implementation of court rulings will beeffectively available and affordable to people at large, and will provide some momentum and guidance to subsequent study for that purpose.

3

Study on the Improvement of the Korean Execution Officer System (2021) :

Execution for Delivery of Immovable Property and Others

Soo-kyung NA
Research Officer

Compulsory execution is a legal procedure that an enforcement agency compulsorily enforces the right to performance of a judgment creditor whose right is specified on the title of execution. Execution officers are a typical enforcement agency that attends at the place of execution and conducts execution at the front line.

To realize the right of the judgment creditor, execution officers face difficulties in dealing with the judgment debtor's resistance and obstruction during the execution process since they might infringe on the judgment debtor's human rights against the will of the judgment debtor, such as the right to housing. In addition, there is always the possibility of physical conflicts arising from conflicts of interest between the judgment creditor and the judgment debtor, and execution officers' personal safety could be threatened during the process. In particular, the execution of claim for delivery of immovables, etc. according to Article 258 of Civil Execution Law is one of the most typical compulsory executions with such dangers, which execution officers find most challenging.

The purpose of this research report is to strengthen the efficiency of execution and the professional stability of execution officers by examining the problems of the execution environment and the execution officer system in Korea with a focus on 'execution for delivery of immovable property and others' and seeking improvement measures thereof.

To this end, this report suggests institutional and statutory improvement measures to allow compulsory force against persons for execution officers and execution assistants, strengthen execution officer's accountability for management and supervision, substantiate police assistance, protect the safety of execution officers, protect judgment debtors, and ensure smooth execution.

4

Research on the Civil Execution of Virtual assets (2022)

Hyejeong LEE
Research officer

The Supreme Court recognized the property value of bitcoin, a representative Virtual asset, and the sum of the market caps of each of the world's top 10 Virtual assets has reached 1,700 trillion won. Considering these facts, it seems natural that Virtual assets appeared in the civil execution target.

However, intangible Virtual assets, which are characterized by their "anonymity" in that personal information is not required for their retention and transfer and "decentralization" in that there is no central authority to manage their retention and transfer present difficulties in the application of general legal principles of the execution procedure that must be carried out pursuant to the procedure stipulated by the Civil Execution Act according to the nature of the object of execution. Moreover, in a situation where there is yet no law that provides standards or directions for how to handle Virtual assets in civil execution procedures, litigation related to Virtual assets and applications for their execution are steadily increasing.

Therefore, by referring to various perspectives and rapidly changing policies on civil execution procedures related to Virtual assets, we proposed in this report a legislation bill on civil execution procedures for Virtual assets and their operation. The details are as follows:

We divided the civil execution procedures for a Virtual asset into "monetary execution procedures" whose execution title is based on monetary claims and "non-monetary execution procedures" whose execution title is based on non-monetary claims, and then presented respective execution methods for the monetary execution procedures depending on who manages the Virtual asset. Here, considering the nature of Virtual assets as "other property rights" under the Civil Execution Act, we proposed execution provisions for Virtual assets by appropriately harmonizing the provisions on execution of claims and execution of movables.

First of all, in the monetary execution procedure, ① in one case where a debtor manages his/her Virtual assets, we devised an execution procedure in which the Virtual asset itself, which is "other property rights," shall be seized, and when the execution officer receives the debtor's Virtual assets according to the "Virtual asset transfer order," the execution court shall distribute the money converted by the sale order; ② in the other case where a third party manages Virtual assets and the debtor has the right to claim transfer of Virtual assets to the third party, we proposed that the "right to claim transfer of Virtual assets" itself shall be seized as "other property rights" and that the "Virtual asset" itself, which was transferred

to the execution officer by the "Virtual asset transfer order," be treated in the same way as in the procedure for cashing out and distribution in ① above.

With regard to non-monetary execution procedures, we reviewed how direct compulsion, substitute execution, and indirect compulsion should be applied to the compulsory performance of Virtual asset transfer obligations, referring to the current status of domestic and international discussions. In particular, the German High Court judgment and its related positions that "the obligation to transfer Virtual assets is the substitute obligation of an act, so performance must be compelled by substitute execution" are expected to be an important reference when discussing judgment execution procedures in Korea that the claim to transfer Virtual assets is the execution title and compensatory damage should be made in case of inability to execute. Also, we proposed a method using the default system as a non-monetary means of indirect compulsion related to Virtual assets.

In addition, we looked at various factors to consider when executing Virtual assets in consideration of the characteristics of Virtual assets and ended this report by examining ways to search for Virtual assets to be executed.

Virtual assets, which emerged as a rebellion against the collapse of the individual economy by the state, are inherently and technically implemented so that they are difficult to restrict by institutional systems. With regard to Virtual assets, it may be reckless to try to transfer their value and turn them into cash by the standard of "law."

Moreover, thousands of altcoins have different characteristics from bitcoin, so there may be limitations in applying the contents of this report that studied civil execution methods based on bitcoin technology to all altcoins.

Under these circumstances, it is difficult to propose a firm method for how to properly handle Virtual assets in civil execution procedures. Accordingly, this report focused on suggesting matters that can become a major framework for civil execution of Virtual assets with a focus on the common characteristics of bitcoin and altcoins. Therefore, although it may be difficult to apply the contents proposed in this report directly in practice, we hope that they would be of some help in preparing other research, policy preparation, or legislation related to the preparation of civil execution methods for Virtual assets.

5

A study on the Improvement of the Property Specification System (2022)

Hyunwoong SEO
Research Officer

The purpose of the property specification system of the Civil Execution Act is to accurately and quickly capture the information of the debtor's property in the compulsory execution process, which is a factual dispute resolution process. Enacted in 2002, the Civil Execution Act introduced the detention system as a measure of restraint and the property information inquiry system as a means of verification into the property specification system to enhance the effectiveness of the existing system. More than 20 years have passed since the enactment, but many questions arise on the effectiveness of the current system. In this context, the present study aimed to make an objective research and recommendations for improvements.

First, in order to identify the problems of the property specification system, statistics and data showing the current status of the following are analyzed: system utilization status, procedure duration and final data, restraint status (e.g. on detention operations and criminal punishment), etc. In addition, problems of practice are identified through interviews with those involved and analysis of preceding studies.

In the analysis, the underlying causes that contribute to the decline in effectiveness were identified: prolonged period for specification of property, underutilization of property lists due to its limited coverage (i.e. perfunctory submission of property lists), sanctioning power of the detention system being weakened, limited role of the property information inquiry system, etc. These factors revealed the structural limitations of the current property specification system, since it requires sincere cooperation of the debtor.

Accordingly, two plans are proposed respectively to enhance the effectiveness of the current system. One is to increase promptness and accuracy while maintaining the framework of the system as far as possible, and the other is to fundamentally improve the matters on the agent, operation methods, detention system, etc. Furthermore, in order to overcome the structural limitations of the current property specification system, which requires sincere cooperation of the debtor, a proposal for strenghening the use of the property information inquiry system, which is not based on the cooperation of the debtor, is also included.

This study is significant in that it objectively presents the limits and weaknesses of the current property information inquiry system. In order to overcome the structural limitations of the property specification system and quickly and accurately investigate property

information, there is a need to develop an integrated property information inquiry system that is based on information and communication technologies and financial information networks. However, since it requires social discussion and time, the strategy to improve the matters on the agent and operation methods of the current property specification system should be combined.

6

Improvements to the Public Auction Procedure (2023)

- Focusing on the current status investigation procedures of housing lease relationships -

Hyejeong LEE
Research officer

While the Housing Lease Protection Act grants housing lessees the ability to meet the requirements for opposing power in the simplified manner of "provision of housing" and "resident registration" rather than leasehold registration, a number of issues arise within the realm of auction practice, wherein the court of execution assesses whether the object of the auction has a lease relationship encompassed by the Housing Leasehold Protection Act and discloses pertinent leasehold information in the sale procedure.

First, most of the current status reports prepared by the execution officer list only the date of the tenant's moving-in report. Consequently, unless the tenant demands a distribution, the auction procedure is operated without disclosing information, such as the rental deposit or lease period, which plays a pivotal role in determining the purchase price, for prospective buyers to participate in the auction. Second, addresses, especially detailed ones such as "203, 2F, Building 1," can be expressed in diverse formats, and certain categories of residence do not require explicit specification of detailed addresses, resulting in a situation where lessees who reside at the object of the auction are omitting in the process of identifying them through addresses. Third, individuals such as foreigners, foreign nationality Koreans, and disabled individuals who hold the status of housing lessees face a disadvantage due to the fact that the auction procedure is conducted exclusively in Korean language and centered primarily on non-disabled individuals. Fourth, in order for housing lessees to exercise their preferential repayment rights and receive dividends, it is necessary for them to demand a distribution and maintain their opposing power until the completion period set by the execution court for distribution demand. However, in practice, it becomes challenging for the lessee to accurately identify the completion period to make a distribution demand.

To address these problems, this report examines the following measure: ① Utilizing the acknowledged fixed date system and the housing lease contract reporting system to expand housing lease information, ② Implementing an improvement plan on the action procedure to resolve issues arising from diversely marked or even unmarked detailed addresses, ③ Improving the auction procedure aiming at ensuring the housing rights of foreigners, foreign nationality Koreans and also the disabled who are vulnerable as housing lessees, ④ Proposing a plan to modify the method for the service of notice notifying the lesses of the initial or modified completion period of demand for distribution in a bid to increase the likelihood of direct receipt and full awareness on the part of lessees, and so on.

Considering the interactions between housing leases and the auction procedure, this

research report suggests the implementation of a system that preserves the fundamental framework of the auction process while adapting to keeping up with times and contemporary demands. It is our aspiration that this report will contribute to the effective functioning of the auction system, which impacts not only housing lessees but also individuals involved with the auction procedure and the nation as a whole.

7

Understanding Redevelopment, Reconstruction, and Real Estate Auctions (2024) :

Focusing on the Act on the Improvement of Urban Areas and Residential Environments

Jonggu LEE
Research Officer

Land designated within improvement zones, despite being privately owned, remains a component lot of the nation's spatial framework. Consequently, improvement projects are governed by both the macro-level regulation of the national spatial plan and the micro-level regulation of statutes such as the Act on the Improvement of Urban Areas and Residential Environments, even in instances where the land is subject to auction. When land within an improvement zone becomes subject to auction, three interrelated processes—namely, the improvement project, auction, and registration—inevitably come into play concurrently. For judicial practitioners tasked with determining whether to proceed with auction procedures amidst these competing processes, a through comprehension of the seemingly nuanced principle of exchanging rights as applied to improvement projects, as well as its intrinsic connection to registration procedures, is imperative. In essence, while the processes of improvement project, auction, and registration are procedurally distinct, they are fundamentally interdependent. The evolving legal relationships throughout the stages of an improvement project invariably influence the other two processes. Thus, a foundational understanding of all three procedures is indispensable for making informed decisions regarding the continuance of auction proceedings.

Meanwhile, the Act on the Improvement of Urban Areas and Residential Environments delineates the registration process only after the issuance of the public notice of transfer, leaving the procedural framework preceding this juncture specifically not addressed. Consequently, protracted periods of incomplete disclosure are unavoidable, spanning from the demolition of an old structure as part of the improvement project to the eventual registration of the new building for ownership preservation. Specifically, in transactions involving the acquisition of an association member's right of occupancy—comprising both an existing structure and its corresponding land—it would ostensibly be feasible to achieve full transparency by registering both the land and the structure. However, under current practices, only the land is subject to registration, giving rise to an incomplete disclosure paradigm. This discrepancy directly influences auction proceedings, frequently resulting in situations where only the land is auctioned, despite the intrinsic necessity of blanket auction both land and structure. Moreover, the demolition of the preexisting building presents a juxtaposing problems in the context of legal interpretation. Under general jurisprudence, the destruction of a structure unequivocally terminates ownership. In contrast, the improvement

project doctrine—exemplified by principles such as exchanging rights—maintains that ownership persists until the issuance of the public notice of transfer. This divergence engenders contentious debates over whether the execution court should revoke the auction's procedure for the preexisting structure in observance to the general doctrine or proceed under the improvement project doctrine. The absence of regulatory mechanisms to reconcile this doctrinal inconsistency exacerbates the practical challenges, leaving a lacuna in the legal framework governing these conflicting perspectives.

In light of the aforementioned context, this research endeavors to elucidate the complexities of improvement projects governed by the Act on the Improvement of Urban Areas and Residential Environments, by virtue of seeking in depth understanding of redevelopment, reconstruction, and registration affairs. It aims to critically analyze the practical challenges stemming from the isolated sale of land, with the objective of guiding auction practices toward more rational and context-sensitive resolutions aligned with the realities of improvement projects. Specifically, in circumstances where the blanket auction of land and buildings is demonstrably more suitable, this report primarily suggests practical solutions that would function within the current legal framework, given the difficulties for immediate statutory amendments. Furthermore, as a long-term but ultimate, it advocates the legislative reforms to the Act on the Improvement of Urban Areas and Residential Environment, thereby ensuring that enduring solutions can be institutionalized through statutory revisions.

XIII Public Communication and Legal Education Support

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1

A Research on Measures for Encouraging Participation of the Public in Judicial Administration (2014)

Jae-Seok RHEE
Senior Judge Researcher

The focus of this research is to review the development and current state of citizen participation in the judicial administration in Korea and the operation of court and community collaboration in US and, based thereon, explore the areas where 'citizen judicial council' and 'citizen judicial participation organization' can be improved and propose viable policy alternatives.

This research makes a series of proposals on how to improve the mechanisms ensuring a representative and comprehensive dialogue between the court and the community from the standpoint of systematization, implementation, specialization and consolidation.

The main suggestions are the activation of sub-committee and steering committee, diversification, website for on-line advice and debate, issue-finding through in-depth interviews for court users, staffs and participants, program for staffs, guideline for management, on-line community, orientation.

I hope that this research will contribute to planning, implementing and maintaining citizen participation in the judicial administration in Korea.

2

A Research on the Development of Leveled Mock Trial Scripts for Middle and High School Students (2014)

Weon-Keu PARK
Senior Judge Researcher

The scripted mock trial has proven to be an effective law related education method for middle and high school students. It helps students learn basic knowledge about the law and develop legal listening, speaking and thinking ability. In addition, it fosters a better appreciation of the judicial system and promote future generation's trust in the Korean judiciary.

The purpose of this research is to develop leveled mock trial scripts for middle and high school students and the mock trial manual. This research focused on developing mock trial scripts and mock trial manual appropriate for the advanced court experience program.

Through this research, 7 mock trial scripts and the manual for the mock trial scripts have been developed.

The 7 mock trial scripts consist of 3 scripts for middle school students(1 civil trial and 2 criminal trials) and 4 scripts for high school students(2 civil trials and 2 criminal trials).

The mock trial manual has been developed for judges conducting the 7 scripted mock trials for students. The mock trial manual includes guides to the desirable way of using the mock trial scripts and several materials for preparing and running the scripted mock trials for students.

The mock trial scripts and the manual will do much to contribute to the judicial branch's law related education for middle and high school students.

3

Research on Different Level Lecture Programs Conducted by Judges for Elementary, Middle, and High School Students (2015)

Seungtae HWANG
Judge Researcher

Judges' lecture is an important and effective law related education method for elementary, middle, and high school students. It equips students with the knowledge and skill pertaining to the law, the legal process, and the legal system. It helps students develop conflict resolution skills as well as legal listening, speaking, and thinking ability. Furthermore, it fosters a better appreciation of the judicial system and promotes future generation's trust in the Korean judiciary.

The purpose of this research is to develop level-based syllabi in the lecture programs conducted by judges for elementary, middle, and high school students. Especially, this research focused on measuring the level of students and selecting topics and contents according to the level.

Through this research, 3 level-based syllabi for elementary(4th~6th grade), middle, and high school students have been developed.

Each syllabus reflected the significant contents of the law related education, yet the topics are configured differently according to the level.

The lecture for elementary school students consists of 22 topics focused on the basic understanding of the legal system and promoting the law-abiding spirit.

The lecture for middle school students consists of 26 topics focused on the general understanding of the judicial system.

The lecture for high school students consists of 31 topics focused on improving the dispute resolution ability and the right understanding of the judicial system and the judicial process.

Each syllabus includes desirable lecture methods, powerpoint presentations, lecture contents, key points, relevant units of textbook, and explanations.

These lecture syllabi will do much to contribute to the judicial branch's law related education for elementary, middle, and high school students.

4

Research on the Measures to Promote Public Awareness and Understanding Regarding the Judgments of the Courts (2015)

Sihoon YANG
Judge Researcher

The essence of judicial action is the adjudication by a court resolving a legal dispute. A Judgment settles disputes legally and socially, forms a new order, and ultimately promotes social integration.

These functions of judgment will be substantially accomplished when legal culture becomes mature enough for the public to accept the judgments of the Courts. This is the reason why the judiciary should provide the foundation for promoting public understanding of the judgments and operate various systems for public relations.

This research devised the ways to enhance public understanding of judgments and promulgate them.

Several findings have confirmed that the general public has a strong interest in the judgments given by the courts, however there is a lack of public understanding of them, which in turn would undermine the confidence in the judiciary.

Furthermore, this research examines the cases of public relations and education of the judgments held by the courts. For example, it explores an outreach through media, an introduction and public relations of the judgments on the judiciary website, publications of judgment-related books, the court experience program at the Supreme Court of Korea Exhibition Room, reinforcement of media policy including public information officers, and systematic extension of public access to judgments. Moreover, it introduces the outreach program, regarding public understanding of judgments, of the Seoul Central District Court.

The relevant cases in several countries, including the United States, the United Kingdom, Canada, and Japan, are further examined.

The practical ways to improve public relations and education of judgments are suggested and have two parts as general principles and their application in specific contexts.

The principles of a direction for improvement include the development and enhancement of relevant systems, a wide-range of participation, the establishment of various channels, the development of the user-customized system, the reinforcement of cooperation among relevant agencies, thorough follow-up assessments, and the establishment of system operation and continuous public relations.

The specific ways of improvements are suggested as follows: (i) selecting the judgments with high value and informing them; (ii) operating a judgment study room for the general

public; (iii) cooperating with the media for informing of judgments; (iv) improving the introduction of judgments in the textbooks of elementary school, middle school, and high school; (v) improving internet-based materials; and (vi) other improvement plans.

I hope that this research would serve as a momentum for the advancement of public relations and education of judgments, and further as a stepping stone for reaching the ultimate goal of gaining confidence and respect in the judiciary.

5

A Research on the Development of the Mock Trial for the General Public (2015)

Eunjung CHOI
Judge Researcher

Considering that the mock trial program for the students has been actively studied and widely carried out, the similar program for the adults is hard to find and relevant materials are rare.

The purpose of this research is to propose viable ways of conducting 'the mock trial for the general public'. For this goal, this research examines recent examples of mock trials for the general public through empirical studies, and suggests the ways to make mock trials more successful, and provides sample scripts of mock trial which can be useful at each court.

First, after gathering the existing mock trial scripts for the general public, 3 pieces of mock trial scripts have been developed additionally. Each court may use the relevant script for its needs.

Furthermore, this research makes step-by-step proposals on the rules in recruiting and organizing the participants. The approach was made prudently in view of various elements, since the adequacy of the participant composition is crucial for the success of the mock trial program.

Moreover, the ways to promote 'the mock trial for the general public' are devised. As the mock trial is one of the judicial outreach programs for enhancing the empathy between the courts and the people, it is necessary to expand the base where mutual understanding and feedbacks are realized through reflecting the results into the judicial policy or actual trial.

This report might contribute to establishing the mock trial as a novel outreach program, which makes relationship between the judiciary and the public much closer and communicative.

6

Research on Court Experience Programs for Middle and High School Students (2015)

Seungtae HWANG
Judge Researcher

Court experience plays an important role for students. It equips students with the vivid knowledge and information about the law, the judicial process, and the judicial system. It helps students not only to develop legal listening, speaking, and thinking ability but also to learn about career opportunities. Furthermore, it promotes future generation's trust in the Korean judiciary. Meanwhile, the demand and interest in court experience programs have been increasing in accordance with the enforcement of 'free term system' in middle school.

The purpose of this research is to develop court experience programs for middle and high school students. Especially, this research focused on measuring the level and curriculum of students that take part in court experience programs and composing types, topics, and contents of the programs.

This research suggested various programs. The programs are classified into law-related education type and career education type according to the curriculum and purpose. Also, they are classified as half-a-day type, one-day type, two-day type, and vacation camp type according to the period and form; first visit type and revisit type according to the number of visiting.

This research suggested contents and materials of the programs. These contents consist of courthouse tour, watching the court videos, judge's lecture, trial observation, meeting judges and court staff, quiz, debate and discussion, speaking, drawing pictures, watching law-related movies and dramas, mock trial, mock mediation, experiencing judge's work, role-playing, writing legal documents, creating rules, and experiencing electronic litigation.

These various programs and contents will contribute to the judicial branch's law-related education and career education for middle and high school students.

7

Research on Effective Courtroom Communication (2015)

CheaYun JUNG
Professional Researcher

Based on interdisciplinary research with communication studies, this research analyses courtroom communication, establishes a desirable model of courtroom communication, and devises concrete policies to vitalize communication in the courtroom.

First, as a theoretical foundation, this research examines major theories, techniques and strategies of communication, and analyses several types of the communication situation.

Furthermore, this research provides plural elements and characteristics of courtroom communication, and suggests the intersubjective courtroom communication model, which considers both persuasive communication and empathic communication simultaneously.

Moreover, this research grasps major problems in the existing courtroom communication, develops the goals and techniques of courtroom communication, and summarizes several issues and considerations in each type of trial, including a civil trial, mediation, criminal trial, and citizen participation in criminal trials.

In conclusion, this research suggests the proper ways to utilize the established courtroom communication model.

8

Analysis of the Public's Understanding of the Judicial Procedure and Perception of the Trial (2015)

Sooyoung JANG
Judge Researcher

Judicial procedure determines the legal rights or the legality of a specific case by applying laws. The public understanding of the judicial procedure is the indicator showing the extent and accuracy of law-related education the public has received and coverage of the procedure by the mass media(TV, newspapers, internet, etc.). Perception of the trial of the people is the basis for determining fairness, transparency and adequacy of justice. The awareness of the actual trial by the parties is the indicator that determines satisfaction, fairness and propriety of the judicial service. And, it can be seen that the evaluation by the trial parties of the court's guide to the procedure is a criterion to measure the effectiveness of the various court activities to increase public understanding of judicial procedure(Court website, guides, counselors, etc.)

This study was a survey about the understanding for the judicial procedure and awareness about the trial of 1,500 people. And the survey results were analyzed statistically. The purpose of this study is to provide suggestions necessary to improve law-related education, to enhance public understanding of the judicial procedure, and to establish a fair judicial system through the empirical statistical analysis. First, with respect to the understanding of the judicial procedure, the study analyzed ① how people obtain information related to the judiciary, ② to what extent people view themselves as knowledgeable about the judicial procedure and ③ how much information people have about the judicial procedure. The survey on the information is divided into basic information(the distinction between cases that are the subject of civil litigation, criminal and administrative trial, the distinction between party names to be used in the trial, etc), information about the civil procedure(Dispositionsmaxime, Verhandlungsmaxime, etc.), and information about the criminal procedure(Anklagemonopol, Presumption of innocence, etc.). Next, with regard to the awareness of the trial, the study anaylzed the perception of the people without trial experience(the public) and of the people with trial experiences (the trial parties). The details are fairness of the proceedings, the fairness of the trial results, problem awareness of the current proceedings, the confidence in the courts, satisfaction with the trial results, the rising level of understanding of the judicial procedure through the trial, and the change in the degree of confidence in the court through the trial. Through a variety of statistical analysis, the study analyzed the comparisons between the public and the trial parties, comparisons according to demographic variables(gender, age, income, etc.), comparisons according to variables related trial(trial type, the presence or absence of litigation agents), and correlation between understanding of the judicial procedure and awareness of the trial, etc.

9

Research on Measures to Provide Judicial Assistance to North Korean Defectors (2015)

Hakin LEE
Judge Researcher

The year 2015 marks the 70th anniversary of the division of the Korean peninsula. Like all South Koreans, the almost 28,000 North Korean defectors who have fled from the North enjoy the constitutional status of the citizen of the Republic of Korea, as well as the right to trial under Article 27 (1) of the Constitution.

However, having lived in a political, economic, social and cultural environment that differs greatly from that of South Korea, North Korean defectors seldom excercise their rights sufficiently under the Constitution. This is especially true with regard to the right to trial.

The purpose of the present research is to examine measures of providing judicial assistance to North Korean defectors so that they can sufficiently excercise their right to trial. The research is carried out by analyzing the current status of legal disputes concerning North Korean defectors and the difficulty they face in judicial proceedings, thereby identifying the demand for judicial assistance on the part of North Korean defectors.

In order to determine their demand for judicial assistance, the present research conducted a thorough interview with North Korean defectors who have had access to judicial proceedings, so as to verify how they gained access to the current system of judicial assistance, as well as what problems they encountered with the system and judicial proceedings. Furthermore, during the course of the research, experts including lawyers who provide legal assistance to North Korean defectors were consulted on the current operation status of the system of judicial assistance and various measures of providing judicial assistance to North Korean defectors.

In seeking appropriate measures of providing judicial assistance, it is necessary to consider 1) the particular nature of the North Korean defectors who fled from the North Korean regime and 2) the fact that they constitute a social minority in our society. Therefore, the present research chose to perform a comparative legal analysis of the system in Germany prior to and after the unification, along with the system of providing judicial assistance to social minority groups in various countries.

Accordingly, the present research focuses on four separate areas. Ways to provide assistance: 1) through enhancing access to the judicial assistance system; 2) in judicial proceedings; 3) through legal education; 4) by means of participation and communication.

It is important to emphasize that ‘judicial assistance to North Korean defectors’ is not

limited only to guaranteeing North Korean defectors currently residing in our society the right to trial. Its objective is to minimize the confusion in post-reunified Korea that may arise among those living in the North in dealing with judicial proceedings. Also, it aims to be a model for 'providing judicial assistance to residents of Northern Korea' with the goal of substantially guaranteeing their right to trial.

It is expected that the present research on measures to provide judicial assistance to North Korean defectors will contribute to uniting North Korean defectors and the residents of South Korea, as well as residents of Southern and Northern Korea after reunification.

10

Research on Court-based Strategy to Support Pro Bono (2016)

Sang Cheol KIM
Judge Researcher

The modern judicial system, based on abstract, formal legal norms and market principles, is difficult to access due to the adversarial nature of the system and prohibitive costs. This is why many welfare states are determined to overcome such constraints by intervening in different ways, such as improving the legal aid system. Also an important role in addressing the lack of access to justice is played by Pro Bono practices.

The original meaning of Pro Bono is work undertaken by lawyers voluntarily and without payment for those who cannot afford legal counsel. Over time Pro Bono grew from providing free of charge legal services to low-income and disadvantaged people to a social reform movement, the importance of which became obvious after the 2008 global financial crisis. Pro Bono practice in the United States is led by Access to Justice(ATJ) Commissions which are created based on the Rules and Orders of state Supreme Courts. ATJs develop strategies concerning the legal services system as well as the means to finance Pro Bono legal service providers. Also ATJs play a critical role in improving the civil justice system by enhancing access to justice for those left without legal counsel. This is why countries from both common law and civil law systems view the U.S. Pro Bono practice as a model for their own system. Even in Germany where there is a system in place for financing legal costs, Pro Bono activities there are beginning to play an important role.

In Korea there have been Pro Bono activities in the past but they came to be called "Pro Bono" only recently. Currently there are efforts to expand the scope of Pro Bono activities in Korea. Guaranteeing access to a fair justice system is essential in unifying the society, as well as in building trust between state organizations and the private sector. In particular, the court which is responsible for maintaining the justice system should play an important role in supporting Pro Bono activities. Only when Pro Bono activities are operated under the auspices of, or at least in connection with the judiciary will they be systematic and efficient, hence the necessity for creating ATJ Commissions.

ATJ Commissions strive to establish a bond among lawyers and attorneys in the realization of the agenda of narrowing the judicial gap, in identifying other agendas and searching for solutions to problems. They also develop indices for assessing public interest activities, as well as promote solutions and future strategies by issuing Pro Bono reports. In order to support local initiatives according to the particularities of each individual state ATJ Commissions should taylor its approach to reducing the judicial gap. It should ① support low-income and disadvantaged people in gaining access to justice, ② ensure that

all regions within the state enjoy equal access to justice, ③ provide legal counsel to pro se litigants, ④ provide language support for foreigners and immigrants, ⑤ support access to legal information in cooperation with local courts, universities and municipal libraries, ⑥ provide training and Pro Bono opportunites for law school students and other future lawyers, ⑦ guarantee access to justice technology by utilizing various technological solutions, and ⑧ emphasize the importance of Online Dispute Resoution(ODR) and support its expansion.

Pro Bono practices managed by ATJ Commissions can develop systematically, thereby allowing lawyers to efficiently provide legal counsel for those who are in dire need of legal aid. The legal community as a whole, as well as the private sector in general can benefit from such active Pro Bono practices.

11

Supreme Court Decisions and Societal Change (2017)

Minkyung HA
Professional Researcher

The present research examines 30 essential decisions delivered by the Supreme Court that had the greatest impact on our society since Korea gained independence on August 15, 1945. Exploring the state of our society before and after these decisions makes it possible to understand the changes that took place in Korea.

Part II deals with matters of conflict between individual freedom and duty towards the nation, such as death with dignity and conscientious objection. Part III studies the questions concerning the changes in Korean tradition such as the legal capacity of female spouses, female membership in clan unions, changing the gender marker of transsexuals, freedom of changing names, protecting spouses in de facto marriages, recognition of marital rape, and welfare of adopted children. Part IV delves into the problems of protecting the rights of those in need, who as a result of rapid economic growth were left in the shadows of our society, i.e. peasants and tenants, victims of environmental pollution, female employees and temporary workers, small businesses. Part V looks at the position taken by the Court on political issues such as the constitutionality of statutes, unlawful court decisions and retrial, and state indemnification for victims. Part VI discusses the fundamental rights of suspects and defendants, professors denied the renewal of appointment, clients of attorneys in criminal cases, foreign workers, and victims of sexual harrassment. Finally Part VII deliberates on such everyday issues as copyright, scope of standing to sue and subject of judgment in administrative litigation, and taxpayer rights.

Court proceedings reflect not only the position of litigants but also of members of our society not participating in litigation who share their ideas. This is why decisions delivered by the Supreme Court that are final in resolving disputes determine the direction of social policies. In an era of increasing social complexity and variety and of the Court adopting an active approach to resolving disputes, this research will hopefully serve as basic literature for shedding light on what the Korean society should strive for in the years to come.

12

Research on Judicial Measures in Aid of Multicultural Families (2018)

Jin-pyo HONG
Senior Judge Researcher

Multicultural families ordinarily tend not to be familiar with the law, court, trial procedure and other aspects of our judicial system which is partly due to language barriers. Similar to the handicapped or North Korean defectors, multicultural families should be able to gain access to the justice system without restriction so as to assist their settlement in and assimilation with the society in general. It is imperative that multicultural families enjoy the right to fair trial and not be marginalized in the trial process and enforcement of judgment due to the lack of language skills and an understanding in the Korean justice system.

Countries such as the United States, Canada, Australia which are generally well known for their immigrant-friendly practices, and Great Britain, Germany and France where there has been a surge of refugees from Africa and Syria, and Japan which is in many ways similar to Korea, all have various policies that facilitate equal access of foreigners to the local judicial systems. Despite certain differences, all these countries strive to enable foreigners to equally enjoy access to justice. Such policies implemented to support foreigners can provide invaluable and substantive implications for developing concrete measures in Korea in administering legal aid. It is also necessary to heed to the various calls of lawyers and other legal aid providers who can, due to their extensive experience in the field, identify the problems of our judicial system and recommend ideas for finding solutions.

Establishing policies for enhancing access to justice for foreigners requires a proper understanding of multicultural families, based on which a special purpose team would implement plans in successive stages and supervise the process. In order to provide specialized aid to multicultural families and foreigners in general such a team should develop a roadmap and continuously track its implementation. Moreover the team should also collect and analyse the exact statistics regarding the information multicultural families need.

In order to provide fair and equal access to justice for multicultural families the following concrete measures are to be considered. ① For multicultural families unfamiliar with the language and the judicial system of Korea who want to receive information provided by the judiciary via the internet, it is necessary to improve online access, enhance the content and structure of the court website for their convenience, increase public relations so as to encourage online visitors. ② For multicultural families coming in person to the court and submitting various applications or taking part in trials, foreign language support should be enhanced by writing signs in various languages, and increasing the number of service

desks with multilingual staff, as well as making available translated forms, applications and necessary brochures. ③ Offer better and more efficient court interpretation by boosting the number of interpreters, managing a separate list of interpreters who are registered in the court from those who are not, and increasing both groups of interpreters, providing training so as to improve the overall quality of interpretation. ④ For multicultural families facing financial difficulties and lacking a good understanding of our judicial system, enhance and expand litigation aid, as well as strengthen ties with other institutions and groups that provide legal aid. ⑤ Judges, court staff and court-appointed mediators who are in charge of multicultural-family related work should be familiar with its special nature and be made aware of the need for enhancing their human rights through special training. ⑥ Ties with other organizations and institutions that work with multicultural families should be strengthened by expanding cooperation and increasing joint collaborative efforts.

Hopefully the general public will continue to show interest in improving equal access to justice for multicultural families and give advice and recommendations for such purposes, thereby providing support and protecting their human rights. All of this would be conducive to enhancing public trust in the judiciary.

13

Research on Lecture Programs of Law-Related Education for Teachers (2018)

Jonghoon LEE
Professional Researcher

In today's complex modern society, the importance of law is increasing day by day to solve various forms of disputes among members of society, and the need for law-related-education to cultivate healthy legal consciousness of citizens is also emphasized.

In particular, law-related-education at school is very important in the sense that it helps young people who are still in the immature stage learn the normative values of society and solve various legal problems that will be experienced in the future. In order for the law-related-education at school to function, the role of teachers teaching law to students is very important.

However, while the law is very complicated and vast, the law is not fully educated in the universities for the future teachers, so teachers are having a lot of difficulties in teaching law in the education field. Even after becoming teachers, they are given retraining program conducted by various national institutions such as the judiciary and the Ministry of Justice, but there seems to be a limit in the number and the composition of programs.

This study looked at the actual condition of legal education for teachers and aimed at making practical lecture programs that teachers could actually use for students in elementary, junior and high schools. The lecture samples developed through this study are expected to help teachers improve professionalism and teaching ability of law-related-education.

14

A Comparative Study on Methods of Measuring Public Trust in the Judicial Systems and Courts (2018)

Seongsoo HAN
Senior Judge Researcher

In order to deal with the problem of enhancing the public trust in the judicial system and court, it is first necessary to understand and evaluate the level of public trust in an objective and accurate way. However, in some cases, significant differences are found among various internationally published measurement indices concerning the performance of the Korean judicial system.

This study discusses the methodologies of measuring public trust in the judiciary, including specific production procedures, survey or research methods, and characteristics along with limitations of the internationally published measurement indices, as a premise to better assess the performance of the judicial system in Korea, in particular the level of trust in the judiciary. Furthermore, this study tries to identify what causes the differences among various measurement indices and what implications can be found from such differences. In the process, it is found that some measurement indices directly measure the level of public trust in the judiciary itself, while others measure the various performance areas of the judicial systems instead. This study argues that the latter practically estimates the judicial system's ability or competence, benevolence, integrity, consistency, and openness which are factors of trustworthiness in the judiciary and consequently determines the level of public trust in it all together. It is also found that there are similarities and differences among the various measurement indices, in terms of purpose, scope and size of the surveys, survey items or methods, which are regarded as one of the causes of such differences among various measurement indices on public trust in the Korean judicial system and courts.

Taken together the various measurement indices for the Korean judicial system, the Korean judiciary has traditionally achieved better performance and evaluation especially in competence-focused aspect. However, it turns out not to have shown satisfactory results, nor received favorable evaluation in the aspects of benevolence, integrity, consistency and openness, which are the rest of the factors that constitute the trustworthiness of the judiciary. This study concludes that this seems to have been one of the causes of the low level of public trust in the Korean judicial system, and that policies to promote public trust in the judicial system and courts should be designed more systematically and comprehensively, based on the understanding of the substantive meaning and characteristics of each measurement index and various factors of trustworthiness in the judiciary.

15

Research on the Legal Services Insurance (2020)

Eunbin LEE
Judge Researcher

When legal conflicts arise, we ask a legal expert to weigh in, or resort to a civil suit. As a result, legal expenses such as litigation costs and attorney's fees incur. Legal services insurance is a system that guarantees coverage of the cost of legal services, such as litigation costs, attorney's fees, etc. that arise to resolve legal conflicts. It is similar to the health insurance that guarantees medical expenses when diseases and injuries occur.

People protect and realize their own rights through legal services. As protection and realization of rights are requirements to live with human dignity, those who are unable to afford to pay for legal services shall be provided with them. The state provides litigation aid and legal aid system as part of the social security system to ensure that the underprivileged receive legal services.

When a legal conflict occurs to the middle-income households, they may not benefit from litigation aid or legal aid programs, but must pay litigation costs or attorney's fees at their own expense. In the capitalist economy, legal services insurance is a way to reduce costs and efficiently obtain legal expenses against this risk.

Legal services insurance is an indemnity insurance and a cost insurance (passive insurance). Legal services are usually characterized as credence goods. Since legal services users do not have adequate expert knowledge or information about legal services, there is an asymmetry of information between them and legal services providers. From the standpoint of law and economics, it is deemed similar to the cause of principal and agent problem, resulting in moral hazard and adverse selection. These problems are almost the same as those that arise with health insurance, hence the solutions discussed in health insurance issues may have great implications in solving the problems of legal services insurance.

Legal services insurance is mainly active in Germany, the United States, and Japan, and its characteristics have to do with each of the country's civil lawsuit system. In Germany, litigation costs and attorney's fees are enacted as rules in civil procedures, which activates insurances protecting rights that pays out insurance benefits against insurance risks incurring legal expenses. Meanwhile, in the U.S. civil procedures, litigation costs are low and attorneys provide services on a contingency fee basis. Accordingly, insurances are not designed to cover litigation costs nor attorney's fees, but structured to provide legal services in the ordinary and comprehensive scheme. Furthermore, as welfare system for workers developed, legal services insurance for mutual benefit, adopted by organizations,

such as labor unions, has evolved. In Japan, attorney's fees insurance has become widely popular recently. Japanese legal services insurance distinguishes the contingency liability from the general liability. The Japan Lawyers Association actively responds to attorney's fees insurance, and introduces attorneys through the Legal Access Center. In this way, legal services insurance in Germany, the U.S., and Japan is protecting rights and enhancing access to justice.

Domestic insurance companies in Korea have sold legal services insurance as a stand-alone product since 2009, but it is currently unavailable due to the decline in sales. There are several reasons for poor sales results: a lack of product and legal awareness; low insurance premiums that make it difficult to sell legal services insurance as a stand-alone product; and the fact that there exist many insurance products that cover legal conflicts, considering them as an insurance risk, etc.

Considering that there has been a considerable increase in the number of Korean lawyers and civil cases on the merits, the preconditions for legal services insurance have been satisfied, and the national concern and need for drivers insurance, which is a criminal defense expenses insurance against traffic accidents, is on the rise, it is time to discuss the problems and improvements in implementing legal services insurance.

In connection with the insured, it is necessary to set a waiting period to avoid adverse selection on the part of the insured; establish a cost sharing mechanism to prevent the abuse of legal services, thereby warding off moral hazard; and as regards the coverage, guarantee the legal costs to resolve common legal issues, providing insurance products to protect especially the rights of the aggrieved party. To disseminate legal services insurance, it is necessary to adopt it as part of the terms or as a special agreement of an auto insurance or a liability insurance that are commonly accepted already.

If and when the legal services insurance becomes widely subscribed, people would be able to protect and realize their own rights with less cost and have easier access to lawyers, thereby enlarging the legal services market; Court proceedings instituted by legal experts would enable the justice system to be operated rationally and efficiently; Access to justice, being improved accordingly, would lead to the realization of justice in the welfare state.

16

A Guide to Producing Easy-Read Judgments for Persons with Disabilities (2024)

Hyungkwoan KWEON
Judge Researcher

Individuals with limited literacy skills—from disabilities or other factors—face significant challenges in comprehending judicial judgments. Literacy, defined as the ability to read and interpret written language, remains inaccessible to many socially marginalized groups, including persons with intellectual disabilities, individuals with autism, deaf persons who primarily use sign language, as well as children and adolescents. Such individuals often struggle to engage with typically written judgments or discern their meaning by themselves because of poor literacy. Judicial decisions, however, can become more comprehensible when presented in an Easy-Read format—an alternative and augmentative mean of communication combining simplified text with visual aids, such as illustrations, to convey meaning effectively.

As Easy-Read judgments ensure substantive equality by facilitating equitable access to the information within the judicial process and empowering individuals with disabilities to exercise their right to self-determination, developing and disseminating the Easy-Read judgments is desirable.

In September 2022, the United Nations Committee on the Rights of Persons with Disabilities recommended to develop alternative and augmentative means of information and communication for use throughout legal proceedings, such as Easy-Read formats, and in December, the Seoul Administrative Court of Korea issued the first Easy-Read judgement from Korea, a milestone that spurred discourse on the subject. Furthermore, it is expected that Easy-Read judgments to be utilized, driven by the Korean Constitution, the Act on the Prohibition of Discrimination against Persons with Disabilities and Remedy for Infringement of Their Rights, and the United Nations Convention on the Rights of Persons with Disabilities. However, there are still obstacles surrounding Easy-Read judgments since there have been few studies and practical references to producing them.

This study proposes detailed procedures and methodologies for judges in drafting Easy-Read judgments for individuals with disabilities, reducing the burden of utilizing Easy-Read judgments, preventing confusion in practice, and encouraging Easy-Read judgments. The study reviewed domestic and international materials, including books, scholarly articles, and online resources, and conducted surveys and interviews; also statistically analyzed the survey results.

The study begins by defining the conceptual framework of Easy-Read judgments, their

essential components, necessity, legal foundations, and targeted groups.

This study analyzed Easy-Read legal materials from other jurisdictions to get insight into the United Kingdom, Germany, France, Spain, Australia, the United States, Canada, and other countries as well as the initial Easy-Read judgment in Korea. This study also explored the structure, the expected drafter, the providing timing of Easy-Read judgment. Based on the review, detailed guidelines for producing Easy-Read judgments are suggested. This study introduced fourteen examples of Easy-Read judgments, seven criminal judgments, three civil judgments, three family judgments, and one administrative judgment to support judicial practitioners in understanding the concepts and encouraging them to produce Easy-Read judgments. Additionally, the research proposes cognitive and institutional reforms to ensure the effective integration of Easy-Read judgments into judicial practice.

While developing these examples, a diverse group of stakeholders, including 12 individuals with intellectual disabilities or autism, 9 disability rights advocates, 2 Easy-Read experts, 8 Korean legal professionals (including Korean judges), and 3 foreign experts in disability law, reviewed these examples. Furthermore, to find out the improvement of the readability of Easy-Read judgments and gain additional insights, another survey of 40 participants, comprising 15 individuals with intellectual disabilities or autism, 14 Deaf individuals, and 11 elementary school students, was conducted as part of the empirical evaluation.

The judiciary is obligated to safeguard the rights of marginalized people, including individuals with disabilities, and uphold the principle of judicial equity. Easy-Read judgments are a pivotal mechanism for promoting substantive equality.

Drafting Easy-Read judgments could initially burden for judges, as it is not even a familiar concept. However, if every single judge agrees on the necessity of Easy-Read judgment and follows the guidelines suggested in the study, this burden could be eased. Endeavoring to produce and disseminate Easy-Read judgments concerning human rights and social justice would foster greater trust in the judiciary nationwide, including persons with disabilities.

XIV Court Personnel Managemnet

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1

Research on Judicial Appointment and Evaluation Methods to Realize an Ideal Image of a Judge (2016)

- Focused on the United States and the United Kingdom Systems -

Junsun PARK
Professional Researcher

With the revision of the Court Organization Act, the age of 'the unification of the legal profession' has arrived in South Korea. The U.S. and the U.K. judicial appointment systems, which employ judges from among people with certain legal experiences, are being introduced. Unlike the past system, which selected judges based on their academic grades, it is necessary to have in-depth discussions about the selection methods and criteria for judges in order to select well-qualified ones. In this respect, under the present system, which must consider various aspects of applicants for roles as judges, it is important to study the judiciary appointment system of the U.S. and the U.K., which are regarded as the representative countries for the unification of the legal profession, for the successful development of the system in Korea. Therefore, this research examines how the U.S. and the U.K. design the judiciary appointment process to realize the ideal image of a judge.

One of the most important aspects of the judicial personnel management is to develop functions of self-reflection and surveillance over judges. In order to enhance the development of a judicial system, improvements in the judicial appointment system are not enough. Helping in-service judges maintain and upgrade their qualities is as important as discovering new talents and appointing them as judges. In this sense, an analysis of the judicial performance evaluation methods in countries with a unitary system of legal profession, such as the U.S. and the U.K., helps Korea improve its judicial personnel system. Thus, this report aims to examine how the U.S. and the U.K. implement judicial performance evaluation to realize an ideal judge figure.

It is expected that the study of judicial appointment and evaluation methods in the U.S. and the U.K. will contribute to improving our country's methods of judicial appointment and evaluation.

2

Research on the Judicial Reform and Training of Legal Professionals in the Netherlands (2016)

Joo Kyung KIM
Judge Researcher

The Netherlands has made continuous efforts to improve the public's trust in their judiciary, establishing their system based on their well-known pragmatism. Since Korea's judge appointment system that partially selects judges from public prosecutors or lawyers is modeled after the Netherlands' judge appointment system, developing a better understanding of the original system is critical. Despite this, there has been little research conducted on the Netherlands' judiciary system, especially when compared to many other studies conducted on their European neighbors.

The Netherlands' successful judicial reform and improved judge selection system are the result of the long and concrete efforts by the Dutch to enhance public trust, and this study examines the efforts which may shed light on how Korea could increase public trust in its own judiciary system.

With this purpose in mind, this research examines the process of the Netherlands' judicial reform and the concrete efforts they adopted. In particular, the research explores the context of their judicial reform, the creation of the Council of the Judiciary, the establishment of the long-term strategic plan('Vision on the Netherlands Judiciary in 2020') with the regular establishment of the Agenda of the Judiciary every four years, the adoption of an assessment system to improve the quality of the Judiciary('RechtspraaQ'), the utilization of press judges, the reform of the judicial map and the introduction of a new electronic litigation procedure.

With respect to the improvement of the Netherlands' system on selecting and training judges, this research also examines the historical development of the Dutch system, the background of the reform, the key features of the new system, and SSR(Training and Study Centre of the Judiciary).

In addition, as a general introduction to the Dutch judiciary system, this study also examines the general structure and jurisdiction of courts, various statistics on judges, the public prosecution system, and the training system for legal professionals.

3

Comparative Research on the Diversity of Judges (2017)

Joo Kyung KIM
Judge Researcher

The Constitution of the Republic of Korea guarantees the right of the people to trial, and the administration of justice for realizing people's right to trial belongs to the Courts composed of Judges. Judges actually exercise jurisdiction delegated by the people, resolving specific legal disputes in conformity with the Constitution, Act and their conscience. The ground for the existence and validity of the Courts is public trust in the judiciary, and the core of judicial trust is the belief in fair and faithful trial by the Judges.

Today, legal disputes are not only increasing in quantity, but are also complicated and specialized in quality, so efficient and appropriate trials are emphasized together with faithful trials by the Judges. It is necessary to diversify the kinds of the Judges in order to deal with cases efficiently and properly through reduction of the professional Judges' burden and utilization of specialized knowledge and experience.

There are three kinds of Judges under the Constitution and Act of the Republic of Korea: the Chief Justice of the Supreme Court, the Supreme Court Justices and other Judges. According to the above necessity, this study examines the diversity of the last kind of the Judges in major countries that have influenced the judicial system in our country.

First, this study examines the general structure and jurisdiction of the Courts in the major countries, as it is necessary to know the judicial system and general kinds of the Judges of the specific country to understand the diversity of the Judges in the relevant country.

With respect to reduction of the Judges' workload for the faithful trials, this study examines Magistrate Judges in the U.S., Recorders in the U.K., temporary general Judges in France and part-time Judges in Japan, mainly focusing on qualifications, appointment procedures, duties, terms of office and the differences with similar systems in our country.

With respect to the efficient and appropriate trials of special cases utilizing specialized knowledge and experience, this study examines Administrative Law Judges in the U.S., technically qualified Judges in Germany and deputy Judges in the Netherlands, mainly focusing on qualifications, procedures of appointment, the differences with the general Judges in the relevant country and similar systems in our country.

4

The Administrative Law Judge System of the United States (2017)

Jeeyoung BYUN
Professional Researcher

With Korea gaining competence in protecting its citizens' rights against administrative actions, conducting respective scientific studies becomes a prerequisite in order for the substantive due process to be now firmly rooted. This research embarks on one of such needful studies with a recognition that the United States has established its own unique system of administrative law judges, giving persons who conduct formal hearings within the administrative agencies certain protections under the law to guarantee due process. After having studied its qualifications, competences, duties, independence, ethics, discipline, and its professional associations, this research found some constructive lessons from the system. For better illustration, further deepened examinations of the hearing processes, continuing legal education, and support personnel of the administrative law judges both federal and state-wise, were conducted. In addition, the recent challenges against the constitutionality of Securities Exchange Commission's administrative law judges have been briefly reviewed.

This research may be able to provide readers with an insight into the development of sustainable rule of law in the new legal regime which Korea will face, as written with such desire.

5

A Research on Senior Judge Program (2018)

Seongjun MO
Judge Researcher

The senior judge program of the United States has played an important role in preventing its judicial system from being overburdened as well as providing high-quality judicial service to the public. Originally aimed at Article III judges with life tenure, the senior judge program has been developed in order to minimize the drawbacks from life-tenure judgeships and to drive the federal judges to retire honorably. It turned out that the program has not only accomplished the purposes it had set out with, but has also enhanced the effectiveness and stability of the courts. Therefore, the senior judge program has been extended later to non-Article III judges, and state court judges throughout the U.S.. At the present time, senior judgeship has been adopted by many countries including Canada, UK, Singapore, Hong Kong SAR and Taiwan. On the other hand, Germany, the Netherlands, Spain and Japan have set up similar programs like part-time judgeships for enhancing the efficiency of the court.

In South Korea, in consequence of the fundamental transformation in judicial selection process, it is highly anticipated that the court will begin to fall short of judges from the near future. In order to mitigate the operational risk resulting from the shortage of judges, senior judge program should be introduced for securing the effectiveness and stability of the courts. Moreover, the senior judgeship could be utilized as a countermeasure against the decade-long criticism on the quality and fairness of the judicial function by enhancing judicial independence and its performance.

6

Ideal Management Plan for the Termed Civil Servant System (2019)

: Focusing on the Judiciary's Termed Civil Servants

Hyunwoong SEO
Research officer

In the public sector, the status of fixed-term civil servants has been elevated and their roles also has been gradually expanding. The purpose of the system of fixed-term civil servants is to improve the professionalism and efficiency of the public sector by introducing high–performing civilian personnel into the public sector. It is also aimed at improving the flexibility of the personnel management system by improving the existing vocational public servant system which entails considerable expense, compared to the benefits by guaranteeing a person's status.

This report examines the problems of the personnel affair practices of fixed-term civil servants during the period of about 5 years after the implementation of the system of fixed-term civil servants. The improvement plan would reviewed in terms of fixed-term civil servants and the respective state institution making the appointment.

The improvement of personnel practices from the viewpoint of fixed-term civil servants can be considered unusual personnel practices related working period. In particular, in the personnel practices of fixed-term civil servants in Korea, there are frequent cases of longer term employment by means of reemployment following the expiration of original working period. In this regard, this report examines the background of reemployment through new recruitment process, the illegality and purposefulness of such a procedure, and considers the problems and remedies in the recruitment process.

In addition, a practical discussion would be made on what criteria should be established when each state institution applies the new rule introduced in 2015 that extends the working period for fixed-term civil servants with outstanding performance. Because there is still no specific guidance or regulation on how most national authorities should use this rule, this research proposes practical directions and guidelines.

This report also included a discussion the application of the promotion system for fixed-term civil servants who are not allowed by the current legislation, and the problems and improvement plans for the work performance evaluation system.

From the aspect of the state institution, which is the appointment authority of fixed-term civil servants, this report identifies problems of work management and abuse of appointment rights, and suggests on how to pursue the long-term policy in employing fixed-term civil servants.

In particular, this report offers measures to improve the regulations for human resources and practices of the current fixed-term civil servants, especially for the judiciary.

7

Study on Improvement Measures for the Rechtspfleger System (2019)

Kyungoh KIM
Research Officer

Despite a consistent increase in the number of judges, socioeconomic progress and social diversification continues to give rise to litigation increases, with disputes becoming ever more heated and complicated. We are seeing a rise in the number of new and hard cases in which dispute resolution requires large amount of time and effort. High degree of public reliance on the judicial system and growing expectations regarding Judicial Services signifies that it is necessary for judges to concentrate their competencies on litigation trials.

Currently, different countries around the world are utilizing superior court human resources in a variety of ways to allow judges to focus on litigation cases. Korean Rechtspfleger system was implemented based on that of Germany's. The system allows an efficient utilization of human resources in courts through prompt processing of non-litigation cases by Rechtspflegers, which has reduced workloads of judges, and brought qualitative improvements to judicial services. Since its introduction, the system has contributed to creating an atmosphere wherein judges are able to faithfully carry out deliberations.

Meanwhile, court officials have consistently called for the revision of the title "Rechtspfleger" and the expansion of their work scope. In order for the Rechtspfleger system to progress positively, it is necessary to analyze the state and problems of the current system, and to examine the means by which future progress can be made. As such, this study examines the history of the Korean Rechtspfleger system and improvements that have been made thus far. This study concludes with a comparison of the German and Austrian Rechtspfleger institutions, and suggests improvements for the current Korean system.

With the public holding the courts to ever-higher standards, the paradigm for trials is inevitably shifting from "prompt processing" to "faithful deliberation." Many expect that the role of the Rechtspfleger in meeting these high expectations will become even more important over time. However, current Rechtspflegers would need to boost their academic and practical capacities in order to properly and actively respond to these changes in paradigm.

It is hoped that this report will lead to substantial improvements in the Rechtspfleger system for the benefit of the public.

8

Comparative Study on Former Judges Returning to Practice and the Implications for Korea(1) (2019)

- Examples of Overseas Regulations -

Sungan CHA
Judge Researcher

Judges returning to legal practice after leaving the bench could cause a situation that possibly raises doubts about the impartiality and fairness of the judiciary in many countries around the world. Many jurisdictions have discussed and enforced different regulations to address controversies surrounding judges who return to practice. This research first provides an overview of regulations for former judges returning to practice in many other countries, and then pays particular attention to the relevant regulations of the United Kingdom and Canada in which concerns about judges returning to practice have been raised and extensively discussed.

The United States has adopted ethical rules governing judges returning to practice, which include rules on conflicts of interest, rules on the sitting judge's negotiation of employment terms when seeking post-bench employment opportunities, and rules limiting the use of judicial titles or honorifics by former judges. According to U.S. ethics rules, if a former judge appears as counsel before courts where he/she served, sitting judges are advised to recuse themselves, for one or two years following the judge's retirement date. Even though a fixed period may have expired, a judge may be required to recuse herself/himself in a case where counsel for a party is a former judge with whom the sitting judge had a particularly close association. In addition, telephone communications or communications outside a court hearing with former judges are strictly regulated by the ethics rules that prohibit ex parte communications. In rare circumstances, such as New York Court of Appeals or New Jersey's courts, a former judge may not serve as an attorney before the court at all. It is also noteworthy that the introduction of the ban against the return to practice of former Article III federal judges has been discussed but not yet resolved.

Commonwealth countries (including former Commonwealth countries) have varying levels of regulation on former judges returning to practice after retirement. In Ireland, according to tradition and the code of conduct for the Bar, judges of the Irish Courts, following retirement or resignation, who return to the Bar may not practice in a court of equal or lesser jurisdiction than the court of which they were members. In Hong Kong and Singapore, by statutes or understanding upon appointment all judges or judges of certain upper courts shall not practice as a barrister or solicitor after they have completed their service. In Nigeria, the Constitution prohibits former judges from appearing or acting as a legal practitioner before any court of law or tribunal completely and permanently.

In Germany, the Federal Civil Servants Status Act enables state law and administrative

measures to prohibit former judges with paid pensions from appearing for up to five years as counsel before the court where they served. In Taiwan, former judges and prosecutors are prohibited for three years after leaving office from taking cases in jurisdictions where they have served. In China, judges-turned-lawyers are prohibited for two years after leaving the bench from representing litigants before any court and permanently from representing or practicing as lawyers before the courts where they served.

In England, Wales, and Canada, there have been long and lively discussions over the regulation of former judges returning to practice. In England and Wales, former judges returning to practice is completely prohibited through the uncodified convention, which is reflected in the terms and conditions of judicial office to which each judge shall agree upon appointment. Between 2004 and 2006, the Lord Chancellor proposed removing the prohibition in order to increase diversity in the judiciary. Safeguards such as a prohibition on conducting oral and/or written advocacy for two years after retirement before any court and a prohibition for five years on the provision of advocacy services before judges at the same or at a lower tier were proposed in order to reduce possible risks of removing the prohibition of former judges returning to practice. As a quarantine period, it was also proposed that a former judge should not take up employment with any firm or individual who, in the preceding two years, has appeared before him/her for a final decision in a matter. The proposal to remove the prohibition on a judge's return to practice, however, was withdrawn due to strong opposition from judges concerned about weakening the status of the judiciary and judicial independence.

In Canada, the regulation governing former judges returning to practice and the limitation on their appearance before courts are governed by self-governing regulations or rules established by the Law Society of each Province or Territory under the delegation of the law. The Model Code of Conduct, which is drafted and approved by the Federation of Law Societies of Canada, has a strong influence on these self-governing regulations. The current Model Code of Conduct prohibits a former judge from appearing as a lawyer before the court of which he/she was a member or before any courts of inferior jurisdiction to that court for three years. At the end of 2018, the Federation of Law Societies of Canada proposed to permanently prohibit all former judges from appearing before or communicating with any court in Canada. The prohibited "appearance" includes both signing materials submitted to the court or tribunal and any communications with the court or tribunal. Amendments have been proposed that would bar lawyers and law firms from soliciting sitting judges or from entering into discussions with a sitting judge about post judicial employment and allow them to discuss employment and business relationships only with a former judge after retirement. A new amendment was also proposed that imposes an obligation not to use or disclose judicial confidences for former judges who return to practice after retirement.

Such examples of regulating former judges returning to practice across various jurisdictions may shed light on how Korea could improve its regulations. For specific implications to Korea, it is advised to refer to a separate research report called, "Comparative

Study on Former Judges Returning to Practice and the Implications for Korea (2) - How to Regulate Former Judges Returning to Practice in Korea", which is published with this research report.

9

Comparative Study on Former Judges Returning to Practice and the Implications for Korea(2) (2019)

- How to Regulate Former Judges Returning to Practice in Korea -

Sungan CHA
Judge Researcher

Examples of overseas regulations on former judges returning to practice after retirement, as discussed in the research report, "Comparative Study on Former Judges Returning to Practice and the Implications for Korea (1)-Examples of Overseas regulations-", which accompanies this research, have several implications for addressing Korean issues on this topic.

Korea is in a very serious situation where the public's distrust towards the judiciary bred by retired judges frequently returning to practice has been realized beyond concern. Every year, large numbers of judges resign and return to practice regularly in their 40s and 50s, long before their retirement age, and even Supreme Court justices return to practice after retirement to represent litigants before the Supreme Court. The current regulation on former judges returning to practice in Korea, namely a one-year cooling-off period prohibiting representation for the parties in the final court where former judges served, is weak compared to many countries in the world in terms of its duration and scope of regional limitation. Recusal and disqualification systems are rarely used, and regulations on abnormal advocacy, such as ex parte telephone communication or communication outside a court hearing, are very weak.

When looking for the reason why a large number of judges in their 40s and 50s resign regularly, a review of the total compensation for judges, which encompasses both monetary reward and nonpecuniary benefits, may be useful. An empirical study is needed to analyze how the levels of nonpecuniary conditions, such as stability, autonomy, working hours, leisure time, and nationwide circular transfer of judges, contribute to early resignation, along with lower judges' remuneration and pension levels compared to foreign countries. Efforts to reduce the number of resigning judges in their 40s and 50s and reduce the unconstitutionality of regulatory measures on former judges returning to practice by balancing regulatory measures with measures to improve the treatment of judges are necessary. However, the biggest motivation for judges to resign early is the huge gap between the income of judges-turned-lawyers and the remuneration of sitting judges. Strong regulatory measures should be considered in the first place as they are the most effective means of reducing early resignation motives by reducing the income of judges-turned-lawyers.

Across foreign jurisdictions, concerns that judges-turned-lawyers may be favorably treated by sitting judges in litigation are viewed as reasonable doubts, not unfair misunderstandings. Former judges returning to practice is regarded as a negative

phenomenon representing the commercialization of a judge's career and an unfair use of judicial confidentiality. Strengthening regulations on former judges returning to practice may, however, lead to a reduction in applications of competent attorneys for judicial posts, so it is necessary to weigh these effects with the intended policy objectives of any regulation. After this assessment, whether to tighten regulations on former judges returning to practice is an area for policy decisions. The decisions must be made by the judiciary or the legislature, but if a decision is made to strengthen regulations, the following steps outline some possible options that may be effective in regulating former judges returning to practice.

First, with regard to first-level regulatory measures, such as prohibition of entry, introducing measures prohibiting the highest level of judges such as Supreme Court Justices and Justices of the Constitutional Court from returning to practice after retirement may be considered. It is necessary to strengthen the restrictions on employment of senior judges in law firms and to establish specific criteria for restricting employment negotiations between sitting judges and law firms. Examples from the UK and Canada would inform this policy decision. In our reality where law firms regularly recruit large numbers of retired judges to form a portfolio so that tailored legal services may be provided by former judges, additional regulatory measures on former judges returning to practice focusing on law firms are needed.

Second, with regard to second-level regulatory measures, such as the restriction on representation by judges-turned-lawyers before courts, the existing one-year cooling-off period should be extended to the range of two to six years, and representation should also be banned not only in the final court where they served but also in all courts where they served for five to seven years before their retirement. If the most effective regulatory measures are desired, representation may be banned in all courts throughout the country for three to five years after retirement, taking into account the nationwide circular transfer of judges. Representation by another attorney in the same law firm that a judge-turned-lawyer belongs to should also be prohibited in cases where the representation of the judge-turned-lawyer is prohibited. Exceptions should only be made on the condition that tight screening measures preventing the involvement of the judge-turned-lawyer are provided.

Third, with regard to third-level regulatory measures, such as case allocation, it is necessary to expand the re-allocation system based on the relationship between sitting judges and attorneys, which functions instead of the recusal and disqualification system that have become a dead letter relating to the representation before courts by judges-turned-lawyers. It is necessary to extend the scope of the re-allocation system to criminal litigation before a single judge and civil litigation, and to extend the grounds for re-allocation from having sat together 'in the same judicial panel' to having worked 'in the same court'. Judges shall be obliged to state their relationship with attorneys, who come before them, and the right to apply for the re-allocation of cases based on relationship between sitting judges and attorneys shall be granted to the complainant, the accuser and the prosecutor of the criminal procedure and the other party of civil procedure.

Fourth, with regard to fourth-level regulatory measures, such as the regulation of abnormal advocacy, specific provisions on the regulation of abnormal advocacy, such as ex parte telephone communication or communication outside a court hearing, which are relatively easy to be used by judges-turned-lawyers, should be introduced. In case of a breach of the above regulations, it is also necessary to improve the effectiveness by stipulating the consequences of such violations, such as imposing a duty of recusal to judges and strong disciplinary measures on judges or lawyers. If a judge or an attorney finds that another judge or attorney has engaged in such improper abnormal advocacy or ex parte communications, a duty to report should be required. Relating to unfair advocacy by judges-turned-lawyers using judicial confidences, as in recent discussions in Canada, the obligation to maintain judicial confidences should be imposed in the Lawyers Code of Ethics. If a judge-turned-lawyer violates it, strict disciplinary measures must be taken.

Fifth, with regard to fifth-level regulatory measures, such as information disclosure regulation, there is a potential regulatory option. By ensuring access to information with regard to the relationship between judges-turned-lawyers and sitting judges in specific cases, the other party, the public or civil society, and the judicial administration can carefully monitor the activities of judges-turned-lawyers. This approach can be very effective, but at the same time it risks encouraging the existing tendency for clients to unduly prefer judges-turned-lawyers. Further research is needed to explore this approach.

Legislation through the National Assembly is the most certain way to implement these regulatory measures. However, even before legislation, parts that can be realized through rules or policies of courts or self-governing regulations or policies of lawyers' organizations need to be tried in advance. In the process of transition to the integration of the legal profession, where lawyers with not less than 10 years of practice are appointed as judges, there is also a need to take measures to improve the nonpecuniary benefits and monetary reward of judges so that strengthening regulations on former judges returning to practice will not cause side effects, such as a reduction in applications of competent attorneys for judicial posts.

10

A Proposed Operation Strategy for the Law Clerk System in Korea (2020)

Sunju MOON
Judge Researcher

With an amendment to the Court Organization Act on July 18, 2011, the law clerk system was introduced together with full-scale unification of the legal profession (appointing judges from among experienced attorneys) and has been implemented since 2012, the year when law school graduates were produced for the first time in the country. Not only is it a newly introduced system that has just begun to take root, but its operation is still going through a transitional period until 2026, when unification of the legal profession will be implemented at full scale.

However, as 2021 marks 10 years since the introduction of the law clerk system, it is worth noting how much its implementation has achieved so far. In this context, this report focuses on summarizing the introduction, operation progress and status of the law clerk system so far, and makes some suggestions for noteworthy improvements in the future.

For this study's method, various internal data in courts were referenced because this system was mainly introduced and established by courts. To identify its current status and gather feedback for improvements, opinions were collected from current and former law clerks and judges who worked with law clerks.

In this report, Chapter 2 describes the progress and intended purposes for the introduction of the law clerk system in detail and reviews a direction for the system's operation. According to the law clerk system's intended purposes, it is clear that law clerks are introduced to support judges appointed from among experienced attorneys. Hence, while the law clerk system may supplement the footing of law schools or practical training of attorneys and promote exchanges among related legal professions, a major direction for its operation in courts should ultimately focus on practically supporting judges.

As a comparison with other countries' laws, Chapter 3 briefly examines the systems in the United States and the UK and summarizes their implications for Korea's law clerk system.

Next, Chapter 4 looks at the current operation of the law clerk system, summarizes the results of questionnaires conducted on the current status of law clerks' work and non-work duties in courts since the system's introduction, and identifies the actual operation status so far and related feedback for improvements. According to these results, the law clerk system has been introduced and operated in a relatively stable manner, contributed to practically alleviating workloads for judges, and established itself as a system that nurtures talented

legal professionals.

Finally, Chapter 5 suggests practical improvements and long-term uses as specific proposals to overcome problems or structural limitations identified in the operation status. As for practical improvements to consider, improvements involving specific duties, a joint law clerk system, stronger law clerk training, establishment of a manual, and other matters related to system operation are reviewed to tackle problems with law clerks' work. In particular, this study suggests a proposed manual for law clerks that summarizes improvements for specific duties and includes minimum guidelines for the defined description of law clerks' duties. As for long-term uses, several options discussed in regard to the law clerk system are briefly reviewed, including assigning more law clerks, increasing the number of law clerks, and improving the recruitment of law clerks.

11

Research on the Judicial Appointment System in the era of the Unification of the Legal Profession (2020)

Shinyoo KIM
Judge Researcher

With the amendment of the Court Organization Act in 2011, South Korea adopted a new judicial selection system that unified the legal profession. Under the new system, judges are selected from practicing lawyers and prosecutors who exhibit professional competence and good character. In the past, judges were appointed directly from the Judicial Research Training Institute (JRTI) immediately after they became qualified to practice law. To implement the new selection system successfully, it is necessary to design appointment procedures to evaluate the applicants' ability and character in a fair and objective way. It is also necessary to eliminate factors that discourage applicants from applying—and strengthen factors that motivate applicants—to increase the number of judge applicants.

This research analyzes many unreleased reports about the judicial appointment system written by the personnel managers at the Supreme Court of Korea in order to check if the competency indicators for the judge applicant evaluation are appropriate and if the qualitative indicators are objective and reasonable. Furthermore, this research identifies the detailed evaluation criteria of the new selection system and discusses the implications of the differences among judicial appointment systems in South Korea, the U.S., the U.K., Germany and Japan through a comparative legal approach. In the process, this research proposes how to improve the new selection system. As to competency indicators, reduction of influence rates of the record at previous examinations such as bar exam or JRTI exams, gradual phase-out of the legal writing skills test, reform of the practical competency-based interview, introduction of interviews based on assessment of practical qualification in the candidate's field of specialization, upgrade of professionality of the committee on document screening process and more systematic and effective reference check are needed. As to qualitative indicators, we recognize that it is required to conduct more objective reference checks. For more systematic and effective reference checks, the role of the Korean Bar Association as a referee has to be strengthened and a lawyer evaluation system regularly led by judges needs to be introduced. For more objective reference checks, South Korea should consider establishing an advisory board for judicial appointments at each district or high court.

This research conducts multiple regression analyses using survey data with the help of Mr. Jaehoo Park, a DPhil student in Politics at the University of Oxford, in order to examine whether the decision-making process to apply for the role of judge is affected by certain institutional factors. The analyses show statistically significant results that the decision to

apply for the role of judge has: (i) a positive correlation with the expectation of judicial independence and the use of the lawyers' expertise; and (ii) a negative correlation with the years of the professional experience and the expectation of childcare. The analyses show, however, results including interaction effects that lawyers who set a higher value on the expectation of a steady income at an advanced age and have a longer career at the same time are more likely to apply for the role of judge. Therefore, in order to attract experienced lawyers, the judiciary needs to provide lawyers with more information about judicial independence, increase influence rates of expertise assessment in the candidate's field of specialization, increase the number of specialized courts and specialized judges, improve welfare policy on the childcare system for judges, and introduce a senior judge program.

This research has some limitations. Adjusted coefficient of determination (adj. R2) is only 0.44, and there could be intercorrelations or interassociations among the explanatory variables (multicollinearity). In addition, there could be data bias given that this research is based upon a one-time e-mail survey rather than systematic quota sampling or random sampling. Therefore, in follow-up studies, it is required to reduce multicollinearity by eliminating overlapping areas among explanatory variables and increase adj. R2 by adding more explanatory variables affecting judge appointment. Furthermore, it is necessary to accumulate data by conducting elaborate and regular surveys of members of the legal profession, as well as general public on the issues related to the judiciary and laws in order to reduce bias of surveys and to correctly analyze the changing demands of consumers of judicial services. This research can serve as a reference to such follow-up studies.

12

A Study on the German Judiciary Act (Deutsches Richtergesetz) (2020)

- Focusing on the Status and Legal Position of Vocational Judges

Bongcheol KIM
Professional Researcher

Among the studies related to the judiciary, studies on the status and legal position of judges are research materials that are closely related to the independence of judges in the Korean Constitution, as well as the status of judges within the judiciary, people's confidence in the judiciary, and good trials. Judges are responsible for ensuring the rights of the people through trials and realizing constitutional values. These responsibilities can only be achieved if the independence of judges is guaranteed.

The German Judiciary Act (Deutsches Richtergesetz), which was enacted on September 8, 1961, and currently remains in force, aims to secure the independence of judges by guaranteeing the status and legal position of judges. Thus, it is necessary to make a close study of the status and legal position of judges stipulated in the Act in a comprehensive and systematic way.

Matters prescribed by the German Judiciary Act, such as the formation, change, and termination of job relations for judges, the contents of their services, supervision of judges, the jurisdiction and role of the service court which ensures the status and legal position of judges, types and details of the obligations of judges, judicial discipline, and the participation of judges in judicial administration through the judicial representative body are based on the grand principle of guaranteeing the independence of judges, and laid down in a way that can be consistent with this principle.

In particular, according to the German Judiciary Act, the independence of judges are clarified as a limit on the exercise of supervisory authority and the unfavorable disposition of the judges are required to be made at least based on consent derived from the judge's voluntary will or judicial proceedings rendered by the court. Also, shortened working hours and leave of absence are viewed in terms of the rights of judges, and with the establishment of a service court, the scope of the supervisory disposition that affects the status and legal position of judges and the independence of the judges, and disputes over high-powered acts of the job supervisor based on other service relationships, has been widening dramatically. Furthermore, in Germany, fairness and transparency of judicial administration have been secured by ensuring the participation of the judicial representative body through the German Judiciary Act and the Court Organization Act thereby barring judicial administration controlled by a few monopolies.

This research focuses on theoretical discussions and actual cases based on the main provisions of the German Judiciary Act, which contains the most essential and comprehensive information on the status and legal position of judges in Germany. Furthermore, the research covers the Basic Law for the Federal Republic of Germany, the Court Organization Act, the constitutions and judiciary laws of each state, as well as other related laws and regulations for a more systematic and in-depth study on the status and legal position of German judges.

However, since it is difficult to properly grasp the actual cases and current situation in Germany with the aforementioned research method alone, various matters related to the status and legal position of German judges are reviewed in a comprehensive and systematic way by referring to surveys, statistics, and news articles related to German judges. Furthermore, although not directly regulated by the German Judiciary Act, matters related to the status and legal position of German judges, such as external evaluation of judges, division of affairs through the Court Steering Committee, and activities of the Association of German Judges are also included as the subject of the study.

The reinforcement of the status and legal position of judges does not end by simply improving the people's confidence in the judiciary by realizing good trials by meas of securing the independence of judges. This ultimately contributes to the guarantee of the freedom and rights of the people. Therefore, strengthening the status and legal position of judges is a goal that should be jointly pursued not only by the judiciary but also the National Assembly, the government, and judicial organizations based on the will of the judges.

13

A Study on Personnel Operation Plan for Court Officials according to Changes in Working Environment including Electronic Litigation (2020)

Mijeong PARK
Research Officer

Electronic litigation in Korea based on world-class IT technology began with patent litigation in 2010, and gradually expanded its scope to civil litigation in 2011, domestic and administrative litigation in 2013, insolvency procedure in 2014, and civil execution proceedings in 2015. As of now, it has been established stably and has advanced highly enough to occupy a worldwide unique position.

The spread of electronic litigation led to a decreasing the volume of works in the field of simple, repetitive tasks for court officials, and thereby the increased work efficiency became the basis for strengthening the competence of court officials, resulting in expanding the scope of works. Along with these achievements, the court is now making new history by taking steps to conduct a demonstration of full electronization of payment order cases and civil litigation. However, behind this lies the participation and hard work of court officials who have been faithfully carrying out the process of advancement and new work in the midst of confusions in the path toward the successful establishment of electronic litigation, the subsequent advancement thereof and the pilot full-scale electronization.

Modern society is constantly changing and developing, and in line with the growing demands and levels of public service, the field of work of court officials is also being transformed into customized judicial work like “Government 3.0.” To this end, many court officials are participating in the process of its development.

In spite of the spread of electronic litigation, the number of court officials has not decreased, but rather has been increasing slightly. This is because we share the context of keeping pace with many other factors according to changes in society, and this is to emerge as a new outcome of improving the quality of judicial services by strengthening the competence of court officials.

The analysis of changes in the workforce of court officials after the introduction of electronic litigation in Germany, Singapore, and the United States, reveals that a reduction in work due to electronic litigation does not necessarily interconnect into the reduction of manpower. However, as the enforcement of electronic litigation contributes to redesigning court affairs and improvement of its efficiency, the perspective that emphasis should be placed on enhancing professionalism in work and improving the quality of court services has given great implications for us as well.

Under the current situation, the personnel operation of court officials must be in line

with the process of changing the work organization demanded by the information-oriented society through feasible and efficient manpower rearrangement, and consequently it is necessary to reinforce professionalism and seek job-oriented manpower allocation, as well as move in a flexible direction that would take the work-life balance into consideration. Although new measures and attempts to increase work efficiency will be important, however above all, its success or failure shall depend on solidifying a foundation of empathy based on trust and fairness by putting the perspective of court officials as a starting point for the efficiency of manpower operation.

It is hoped that this study will help to prepare efficient personnel operation plans for court officials under the electronic litigation system, and in this way, court officials will actively play their roles as the subject of court affairs and as the central axis of the court.

14

Study on the Reorganization for Class and Functional Category of Court Officials for Realization of Fair and Faithful Court Affairs (2020)

Hakgu LEE
Research Officer

The class and functional category structure of general public officials in court consists of 4 functional groups, 28 functional categories and 32 functional subcategories based on nine grades under the State Public Officials Act. Although the class structure of general public officials in court has the universal nature of government officials organization as it is based on the national public official class structure, it has different aspects from other state agencies due to the particularity of court affairs and court personnel.

Nevertheless, there is not much data that has studied to examine the generality and specificity of the class and functional category structure of general public officials in court. Accordingly, the need to study the class and functional category structure of general public officials in court has emerged in order to actively respond to changes in the court' work environment due to the expansion of electronic litigation and computerization of court work, as well as to resolve internally delayed promotions and conflicts between functional categories.

This research report investigated and compared aspects of personnel structure, including the organization of offices and promotions of court members other than judges in major countries, while discussing the class and functional category structure of general public officials in court. By grasping the organization of offices of court members other than judges in the United States, Japan, Germany, and France and the specific duties of those in charge in the courts, factors applicable to the organization of general public officials in courts in Korea could be derived. This research has come to identify that we need to improve and standardize the duties of general court officials in more detail in the job-oriented position classification through studying the systems of the United States, whereas Japan, Germany and France are pursuing the openness of the personnel system through the diversification of the promotion system and the possibility of job changes. however, there would be some limitations in comparing and reviewing with uniform standards, since there might be aspects that are different from the personnel structure of Korean court officials depending on the courts organization and the status of the court members of each country.

Furthermore, this report has analyzed the duties of each class by using the legal basis for the duties of general public officials in court and the actual division thereof to identify the characteristics of such duties. Based on the job characteristics of the court officials, the lack of rationality and resilience of the class system, exposure of problems in performance management and promotion, and the insufficient class and functional category structure in

the information age were found to be major problems of the class and functional category structure of general public officials in court.

In relation to the reorganization of the class structure of general public officials in the court, this research report proposes a few plans such as a plan for reducing the nine-level class to four levels, a plan for expanding the middle level, and a plan for reducing the nine-level class system to an eight-level class system, each as a measure of expanding and reducing the nine-level class system. The report further reviews a plan to increase the number of higher classes that has the greatest ripple effect in relation to the promotion of general public officials in the court as an outcome of the reorganization of the class structure, thereby it suggests some proposals to expand the work of judicial assistant officials and further to increase the number of senior judicial assistant officials, measures for the mediators to be assigned as general court officials, and plans to legalize of the court investigation officer system and ways to raise the class. Moreover, it also examines the introduction of a senior executive service system of the administration to expand the flexibility of senior civil service personnel management, which is closely related to the nine-level class structure, and suggests a plan to expand the open positions to replace the senior executive service system and increase the efficiency of personnel management through the revision of the Court Organization Act.

Regarding the functional category structure of general public officials in court, this report deals with discussions on the functional category integration of court affairs and registration affairs and several issues of personnel management regarding the minor functional category.

As the issue of the consolidation of the functional categories for court affairs and registration affairs has been discussed within the court for a long time, this research has been conducted through a survey questionnaires of court and the data that have been studied so far. From the results of this research, it has confirmed that the necessity of reinforcing qualitative professionalism in the registration affairs and the integration of court organizational culture were two of the biggest problems that emerged. Subsequently, as concrete solutions, measures such as two-functional categories integration, the maintenance of functional subcategory in addition to the two-functional categories integration, the use of a job change system, the expansion of the scope of two-functional categories work, and the improvement of the position management method after two-functional categories integration has been brought as viable proposals. After analyzing the merits and demerits of the various plans proposed, a plan to use a job change system was suggested as an optimal method to solve the problems caused by the functional subcategory separation while maintaining the functional subcategory of registration affairs.

Lastly, a study on the minor functional category was reviewed by focusing on the functional category having a problem in terms of personnel management among various minor functional categories. Specifically, measures to expand the scope of duties of the functional category for management, the discussion regarding integration of the functional

categories for armament and environment, the operational problem of the functional category for emergency preparedness and the functional category for court security management, high class integration of the functional category for technical affairs, and the problem of the salary system of a few specific functional categories were examined.

Finally, it is hoped that this research report will serve as an momentum for court members to express their opinions on the class and functional category structure of general public officials in the court. Additionally, it is also hoped that the opinions of members with various interests will be collected, leading to a reorganization of the class and functional category structure that the court members agree with. In the end, it is sincerely wished that the class and functional category structure of public officials in the court will contribute to the realization of fair and faithful court work, ultimately being conducive to public trust in the judicial service as a whole.

15

Research on Post-Qualification Experience for Judicial Appointments in South Korea (2021)

Shinyoo KIM
Judge Researcher

With the amendment of the Court Organization Act in 2011, South Korea adopted a new judicial selection system that unified the legal profession. Under the new system, which is intended to select judges from practicing lawyers and prosecutors with sufficient legal experiences, the minimum years of legal experience required for successful applicants to the position are designed to increase gradually from three years (since 2013), to five years (since 2018), to seven years (beginning in 2022), and ultimately to ten years (beginning in 2026). Ever since South Korea implemented the new system in 2013, however, the court has had trouble appointing new judges, and in particular, very few applicants with long years of legal experience are applying for the position. Some people argue that this result was caused by the court's skewed appointment policy that have favored younger lawyers and prosecutors with relatively few years of experience. It is, however, fair to assume that a more fundamental cause of the low application rate of experienced professionals is that various institutional improvement measures (e.g., improving the working conditions of judges, making the first trial principally conducted by a single judge, etc.) to increase the application rate of legal professionals with proven competency and good character have not been sufficiently adopted. The present problem is that it would be difficult to achieve such required institutional level of improvements by the year 2026, when the minimum post-qualification experience is set to be increased to ten years. And it would also be a daunting task to get more competent legal professionals with many years of experience to apply for the judicial post merely by improving the individual application processes of the judicial appointment.

Before the new judicial system was adopted, it is unclear whether thorough reviews were conducted on whether a sufficient number of lawyers and prosecutors with long careers were likely to apply for the judicial position, or what changes would occur to the court's personnel and trial system if judges were recruited among legal professionals with ten or more years of legal experience. As the post-qualification requirement for judicial appointment was adopted as a safeguard to ensure that the general public are tried by judges who have proven themselves to be not only competent but also good-natured. It is, therefore, important for the judiciary to understand whether the strengthened requirement of ten years' experience is so excessive that the intended purpose of a qualified trial is rather impeded, and to come up with ways to improve the system.

In order to determine the appropriateness of the ten-year requirement under the new

system, this research adopted a comparative legal study and empirical study method. Comparative legal research revealed that very few developed countries require ten years of legal experience, which suggests that Korea's new ten-year standard goes against the global trend. In addition, in a survey of new judges and judicial representatives from the Conference of Judicial Representatives, 83 percent of new judges and 73.7 percent of judicial representatives responded that a ten-year standard was not appropriate. It was also confirmed that lawyers from law firms, who make up the largest portion of applicants for the judicial post, do not consider moving to a different job after they have worked for more than ten years. Meanwhile, an increase in the minimum qualification experience to ten years, with the retirement age unchanged at age 65, would lead to a decrease in a judge's period of service, which would inevitably increase the number of new judges that the court needs to select every year, adding to the difficulty of new judicial appointments. Furthermore, a ten-year standard would hinder the age diversity in composition of judges and lead to an underrepresentation of judges in their 20s and 30s.

It is also worth noting that the roles expected of judges in trials by the general public has not changed significantly after the introduction of the new system. The people still expect judges, if possible, to take an active part in all cases, write a detailed decision, and if circumstances allow, to be tried by a panel of judges. However, a court entirely composed of judges with more than ten years of legal experience cannot possibly fulfill all of these expectations. As for the United States, a representative country of the system which employs judges from people with certain legal experiences, the adversarial system has firmly taken hold, the burden of writing the court decision is substantially less than in Korea's system, and a single judge hearing of the first trial has also been established. However, Korea's new judicial selection system, modelled after the U.S., was adopted without sufficient consideration of the differences in judge's role in trials between the different trial systems of the two countries. If changes to such systematic differences are preceded in Korea, the minimum post-qualification experience can be set at discretion, even at, for example, to 15 or 20 years. This is because the post-qualification experience is, as such, not a key factor in determining an ideal court system or judge's role. Nevertheless, the ten-year standard cannot help but be excessive in maintaining the status quo, where people's expectation toward the judge's role in trials is not so different from that of the past system in Korea.

To be fair, it is difficult to say with certainty that the five-year or the seven-year standards, which are more relaxed than the ten-year requirement, are beyond question. It is simply that, at the present, when the findings of this research are put together, the five-year requirement had the least negative effect on court recruitment and trials. In the survey, the new judges and Conference of Judicial Representatives responded that a five-year standard is the most desirable post-qualification experience for applicants for the judicial position. But a five-year standard is only a tentative conclusion, and a strengthening of a single-judge court and changes in people's expectation toward judge's role in trials can always push the above-mentioned standard upwards. Considering that there has never been any empirical study on the appropriate level of post-qualification experience for judicial appointment

from both inside and outside the court ever since South Korea introduced the new judicial selection system, this study will hopefully pave the way for successful empirical studies on this important topic.

16

An Empirical Study on the Appointment Status and Work Environment of Judges in the United States and the United Kingdom (2023)

Hyeon Seop JIN
Senior Judge Researcher

Korea implemented a new judicial appointment system in 2013 that contributed to unifying the legal profession, selecting judges from among existing lawyers who have a specific amount of legal experience, excellent practical skills, and good character, after modeling the judicial appointment processes of the United States and the United Kingdom. Significant adjustments are anticipated to be made in a number of areas, including the appointment of judges and their supplemental appointments, transfers, work division, salaries, and pensions. In order to ensure that qualified judges with particular legal careers are appointed, it is essential to thoroughly examine issues such as the assignment of previously appointed or upcoming judges to courts, the transfer of personnel, the division of work, the treatment of judges, such as remuneration and pension, and support for trial assistants for judges.

This study aims to gather fundamental information to discuss how to better manage judges in Korea, which employed the unification of the legal profession system. This management includes judge allocation to courts, the division of work, and the transfer of personnel, as well as the treatment of judges, including judicial assistants, remuneration, and pension. To that end, detailed empirical data on the legal career at the time of appointment, previous work experience, occupation before the appointment, length of service after the appointment, transfer of personnel, division of work, judicial assistants, remuneration, and pension of judges in the United States and the United Kingdom, where the unification of the legal profession system has been established, would be introduced and analyzed. This study seeks to gain insights that will help provide incentives to appoint many excellent legal professionals as judges, thereby satisfying the purpose for which the unification of the legal profession system was introduced and creating an environment that encourages judges to remain in the profession for a long and stable career to ensure the success of this new system.

The second chapter of this research looks into the legal career at the time of appointment, occupation before the appointment, length of service after the appointment, transfer of personnel, division of work, judicial assistants, remuneration, and pension of United States judges. Dividing the United States court system into federal and state courts, Section 1 begins with an overview of the federal court judge appointment process before delving into the legal career at the time of appointment, occupation before the appointment, and length of service after the appointment of judges to the Supreme Court, Federal Court

of Appeals, and Federal District Court, before examining transfer of personnel, division of work, judicial duties, judicial assistants, remuneration, and pension. Section 2 investigates the organization and structure of state courts and selects a sample of nine states out of fifty to identify legal careers at the time of appointment, occupation before the appointment, and length of service after the appointment to the Supreme Court, Court of Appeals, and Court of First Instance in the selected nine states of judges. Furthermore, it examines the transfer of personnel, division of work, judicial duties, judicial assistants, remuneration, and pension of state court judges. In Section 3, federal and state court judges in the United States are compared with regard to their legal careers at the time of appointment, occupations before appointments, length of service after the appointments, transfer of personnel, division of work, judicial duties, judicial assistants, as well as remuneration and pension, with a view to drawing implications for Korea.

Chapter 3 of this research examines the legal career at the time of appointment, occupation before the appointment, length of service after the appointment, transfer of personnel, division of work, judicial duties, judicial assistants, remuneration, and pension of United Kingdom judges. Section 1 provides a systematic overview of the organization of the United Kingdom courts and examines the various types of judges, including Supreme Court Justices, Court of Appeal Judges, High Court Judges, Circuit Judges, District Judges, and Tribunal Judges. Section 2 provides an overview of the appointment process of United Kingdom judges, examines the legal career at the time of appointment, occupation before the appointment, and length of service after the appointment of full-time judges, such as Supreme Court Justices, Court of Appeal Judges, High Court Judges, Circuit Judges, and District Judges, and then examines their transfer, duties, assistant staffs, remuneration, and pension. Section 3 synthesizes the legal career at the time of appointment, occupation before the appointment, length of service after the appointment, personnel transfer, division of work, judicial duties, judicial assistants, remuneration, and pension of United Kingdom judges, and thereby makes implications for Korea.

The empirical data presented in this research can be used to draw the following implications by specifically examining the status quo of judicial appointments and the work environments in the United States and the United Kingdom, where the unification of the legal profession system is well established. First, it is not necessary to uniformly require a specific number of years of legal experience for all judicial appointees when determining the number of years of experience required for judge appointments in Korea. Instead, qualification requirements should be established in consideration of the duties to be carried out as a judge after the appointment. Second, the Court of Appeals and the Court of First Instance in Korea should be made up of qualified judges with comparable legal careers, analogous to the federal court of the United States. Third, in order to develop a pool of candidates with excellent practical skills for judicial appointments, it is necessary to encourage legal professionals with lawyer licenses to enter a variety of fields and expand their roles to include duties similar to those of judges. Fourth, the number of people who support judges in their work should increase, as should the extent of their involvement. Fifth,

a body like the Judicial Compensation Commission should be created to regularly assess whether the level of remuneration for judges is appropriate to ensure that lawyers with excellent practical skills and good qualities may opt to serve as judges. Sixth, Korea needs to set up a part-time judge system to verify the competence, qualifications, and expertise of judges, similar to the United Kingdom. Seventh, in order to enhance the professionalism of judges and the specialization of trials, the current rotating judge system should be reduced. Additionally, consideration should be given to the appointment of judges based on function, long-term service in the same court, and long-term performance of the same work. Eighth, as in the United Kingdom, civil and criminal case-handling procedures should be diversified, and cases should be quickly classified to ensure that the most appropriate procedure is applied on a case-by-case basis.

It is hoped that this research will contribute to creating incentives for excellent judicial professionals to be appointed as judges who fulfill the purpose for which the unified legal profession system was introduced in Korea and also likely contribute to developing a climate where appointed judges are encouraged to remain in their positions for a significant period to ensure the success of the unified legal profession system.

17

Research on Improvement Measures for the Proper Operation of Judges in Criminal Cases (2023)

Sangjin TAK
Judge Researcher

A criminal trial is a series of procedures to discover the substantive truth, identify the perpetrator who committed the crime, and impose criminal sanctions on him or her. Due to the irreversible nature of the punishment, which typically entails physical restraint of the offender, it is unavoidable to elect the appropriate punishment prudently. Additionally, the criminal trial itself has a significant impact on society, which has a great impact on how people develop confidence in the judiciary. Despite the function and significance of criminal trials, judges' reluctance to conduct criminal trials has escalated in recent years, which has caused a decline in case processing rates and delays in trials.

The first and most commonly mentioned reason for judges' reluctance to conduct criminal trials is excessive workload. According to the strengthening of court-oriented trials, the practice of holding all of the arguments in court may guarantee the defendant's right to a defense and a full hearing, but it inevitably lengthens the time and effort invested in a case, which will lead to an increase in workload. Judges also brought up the external pressures placed on criminal cases, the disclosure of their private lives, and the inconvenience of paper records that have not been converted to electronic format.

This study first identifies the current situation and factors contributing to judges' avoidance of criminal trials in Korea through literature analysis and in-depth interviews with legal professionals. It then looks at the division of criminal responsibilities and criminal trial systems in the United Kingdom, the United States, Germany, France, and Japan. After obtaining inferences from a comparative legal analysis of criminal justice systems in other countries, this study suggests improvement measures for the operation of judges in criminal cases in Korea.

First, keeping a reasonable workload and enhancing the work environment are two essential elements in the effective operation of judges in criminal cases. Especially in light of the overburdened workload, which is the main contributing factor, it is necessary to increase the number of judges and law clerks who support them in order to decrease the number of cases per judge in quantitative respect. Despite the fact that the number of cases per judge in Korea is incomparably higher than in Europe or Japan, recent changes to the environment of criminal trials have accelerated the increase in workload. The most fundamental resolve is, without a doubt, to increase the range of judicial resources. Following that, extending the subject-matter jurisdiction of single-judge criminal cases can be considered as a means of actually reducing the number of cases per judge through the system. This is consistent with

the recent expansion of civil single-judge jurisdiction and family single-judge jurisdiction.

In terms of case quality with regard to workload, i.e., the difficulty of cases, it is necessary to select and focus on the dualization of criminal cases so that cases where the defendant confesses or minor cases with clear evidence are handled quickly, while cases, where the offense is serious, are handled deliberately. Furthermore, the specialized criminal courts that deal exclusively with complex, specialized, and difficult cases are required to respond proactively and efficiently to intelligent crimes that are becoming more sophisticated as society changes.

In addition to the aforementioned discussion of judicial workload, it is important to examine the work environment. The committees on the division of responsibilities that are currently in place at all levels of courts ought to consider the effectiveness and appropriateness of criminal trials, the preferences and expertise of judges, previous workloads, and equity when deciding how to divide responsibilities. This report specifically suggests looking at judges' overall workload, not just within each court, and establishing a minimum number of years of service in criminal trials as well as giving more weight to years of service, particularly as an associate judge in criminal trials. Additionally, as incentives for judges in charge of criminal trials, which are typically avoided by most judges, it is recommended to implement measures such as ensuring long-term service in the desired area, providing training opportunities to strengthen professionalism, exempting on-call for warrants, establishing actual expenses and allowances related to criminal trials, as well as providing preferential measures including dedicated parking spaces and exemption of weekly car-free days.

Finally, it is proposed to create a single channel of communication through the court press office to address unfair pressures and reports from the outside media, supplement and improve current personal protection provisions to effectively protect judges and their families from harm such as assault and intimidation, and enact legislation for the aggravated punishment of the crimes committed in retaliation against judges.

In order to settle and develop into a successful system, the previously stated road map for the proper operation of judges in criminal cases must be implemented organically and in harmony with various systems. It is difficult to anticipate significant changes promptly because this involves budgetary and legislative issues. The public's confidence in the judiciary, however, is directly related to the proper operation of criminal courts, and if that confidence diminishes, the existence of the judiciary will be jeopardized. It is not a matter of personal preference for most judges to prefer not to participate in criminal trials; rather, there is a structural issue with the operation of criminal courts. In light of this understanding of reality, this report identifies the issues and suggests an array of possible solutions.

It is important to keep in mind in this discussion that the protection of the public's right to a fair trial is at the core of what we are trying to accomplish through the efficient operation of judges in criminal cases. Hopefully, the suggestions in this report are expected to be helpful in the future when developing and improving the criminal justice system.

18

Belgian Judicial Reform and the Judicial Appointment System (2023)

Yongseong SUH
Professional Researcher

Since 2013, the Republic of Korea has implemented a system for the unification of the legal profession, which involves selecting judges from a pool of lawyers with a certain amount of professional experience. Typically, the unification of the legal profession is adopted in Anglo-American countries. Attention has been drawn to Belgium's judicial system because Belgium is nearly the only country with a continental legal system, similar to Korea, that has not only adopted but also sustained the implementation of the unification of the legal profession system over an extended period of time. Prior to 1991, Belgium consistently appointed legal practitioners with at least five years of experience to judicial positions. However, during this time period, the selection of judges was primarily influenced by political affiliations rather than the candidates' inherent qualifications. The 1991 judicial reforms sought to end the practice of politically motivated judicial appointments while also addressing the issue of an aging judiciary. In order to achieve these goals, a competitive entrance examination system for judicial traineeships for young legal practitioners was established. This initiative was designed to allow them to enter judicial roles while also diversifying the age demographics within the court system. A professional aptitude examination system was introduced as well to aid in the selection of experienced legal experts for judicial appointments. Following the 1996 child sex crime and murder incident, known as the Dutroux case, and the ensuing White March - a significant nationwide demonstration by Belgians enraged by judicial inefficiency - a constitutional amendment in 1998 resulted in the establishment of an autonomous and impartial High Council of Justice. The High Council of Justice's primary responsibilities include organizing judicial examinations and nominating qualified candidates for judicial positions. For individuals with more than two decades of legal experience, an oral evaluation examination was implemented in 2006. Furthermore, an examination exemption was introduced exclusively for the Brussels Market Court in 2017.

Belgium has been actively involved in advancing judicial reforms for a long time. The prevailing mantra within the Belgian judiciary is the pursuit of "more humane, expedited, and robust justice reforms," a process that has been in motion since 2021. Belgium has allocated the most significant judicial budget in recent history to this end. This funding is specifically earmarked for increasing the number of judges and other court personnel, as well as digitalizing and modernizing the antiquated judicial system. These measures are intended to address the pervasive problems of delayed case processing and chronic case backlogs that plague the Belgian judiciary.

19

Measures to Improve the Work Performance Ratings System for Court Officials in General Service (2024)

Hyejin KIM
Research officer

In general, a performance evaluation is a personnel management system that evaluates the work performance, workplace capabilities and attitude of individual civil servants at the organizational level. It can be used for personnel management, human resource development, and organizational development at the organizational level and for skills and career development at the individual level. However, the performance evaluation system for civil servants in Korea has problems with validity and reliability. Errors and mistakes in ratings, a lack of evaluators' awareness of fair ratings, generalized rating factors, and personnel management practices based on seniority and cronyism significantly hinder ratings' validity, reliability, and acceptability.

To address these problems, it is necessary to shift human resource management practices from seniority-based to ability and performance-based, change control-oriented evaluation to talent development-oriented evaluation, continuously improve the system to ensure fair and transparent performance-based evaluation and adopt realistic operational practices. The Work Performance Ratings System for Court Officials in General Service, revised on July 1, 2021, has progressed in this aspect. By strengthening the role of raters, improving the rating items and factors, refining the method for determining ratings and awarding points, disclosing evaluation results, introducing an appeal system, and enhancing the elements for making the list of candidates for promotion, the system has widened the way for fair evaluation of talented individuals recognized for their solid abilities and performances.

However, it has been two years since the revised system was implemented, and there are still lots of problems. It is mainly related to rating factors and evaluation criteria, such as duplicate rating factors in meaning, unreliable evaluation criteria, and a lack of specific evaluation metrics or evaluation criteria. In addition, there are problems related to the system's operation, such as the evaluation data, acceptance of raters and ratees, and various conditions for work performance ratings. To address these issues, further efforts are needed to improve the reliability and fairness of the system.

The performance evaluation systems in Germany and Japan could be a reference for figuring out these problems. Germany also evaluates abilities and professional performance similarly to Korea, and their evaluation metrics are very detailed and specific. Additionally, it is essential to allow the official to express their opinion during the evaluation process. Japan has a method of presenting empirically analyzed evaluation items, clarifying objectives through preliminary and final interviews, and providing feedback. After introducing the new

personnel evaluation system, there has been an effort to develop the system by studying more detailed criteria.

Based on the German and Japanese cases, as reviewed, and the regulations of other domestic organizations, this study discussed the way to develop a performance evaluation system in the aspect of rating factors, evaluation criteria, other related evaluation materials, overall conditions regarding the raters and ratees, as well as the work performance ratings.

Regarding the rating factors, "Effort" should be removed from the current rating factors, while "workload" should be included as a score for the position. In the workplace capabilities and attitude evaluation, this study suggests the keywords "professionalism", "proactivity", "effort" and "cooperation" to refine the rating factors. With the evaluation criteria, this study specified criteria for work performance, workplace capabilities, and attitude. This study proposed the evaluation metrics and evaluation criteria for work performance according to job purposes and details. Also, this study dealt with a methodology for comparing and evaluating different positions and how to use it. And this study suggested common standards for workplace capabilities and attitudes while making these standards as specific as possible.

Specific forms were proposed to further delineate the content of the self-rating form as material for work performance evaluation. Amendments to the Rating Rules for the Court Officials were suggested, mandating the collection of opinions from related organizations and establishing a minimum scope for collecting opinions. In aspect of raters, this study proposed strengthening evaluator training, which consists of basic and supplementary training, and the additional training programs might focus on human relations skills. To enhance the acceptability of ratees, this study suggested amending the Guidelines for Handling Court Officials Rating Work to introduce and regularly conduct training for ratees on the Work Performance Ratings system. Finally, in order to establish conditions for the Work Performance Rating, this study proposed holding a task force (TF) or seminar on ratings, producing and distributing a rating manual reflecting the contents, introducing an interview system for communication between raters and ratees, and amending the Rating Rules for Court Officials accordingly.

20

Measures to Enhance Professional Competencies of General Service Court Officials (2024)

Jonggu LEE
Research Officer

The evolving circumstances of the times, such as artificial intelligence, are reflected in aspects of disputes that occur outside the court. When various disputes arising from cybercrime, blockchain-based smart contracts, and virtual asset trading are heard in courts, it becomes a new type of case that reflects the times. A growing number of voices are calling for the enhancement of the professional competencies of court employees who support judges in handling cases as there are an increasing number of new types of complex disputes. Meanwhile, since the examination promotion system—which has served as a means of verifying and strengthening the professional competencies of court employees—is scheduled to be abolished in 2025, it is necessary to put countermeasures in place for an alternative method.

This research investigates the professional competencies that the court employee ought to possess to effectively adapt to the changing conditions inside and outside the court and offer the public trustworthy judicial services as the goal of court organizations, potential areas for improvement in terms of obtaining the necessary competencies, and the methods by which foreign courts and other national institutions in Korea develop their professional competencies and analyzes the problems in an effort to improve them. Through surveys and in-depth interviews, it also identifies the ideal talents for court employees, how to strengthen professional competencies, and appropriate verification measures for achieving this ideal talent.

According to the survey, staff training is carried out in phases ranging between one and two and a half years in hierarchical countries with continental legal systems, such as Germany, Japan, and France. The United States (California), where each employee is in charge of developing their own professional competencies, also mandates certain hiatus periods and operates long-term, phased certification processes. Korea selects key talents from local and educational officials and offers long-term training of six to ten months or longer. However, merely three to four days of minimum job training have frequently been given to Korean court employees due to concerns about work gaps caused by trial schedules, and internal promotion examinations have taken the place of long-term training, such as that provided in foreign courts. Furthermore, since the internal promotion examination system is scheduled to be abolished in 2025, long-term training for court employees cannot be postponed any longer.

On the other hand, few new judges are being appointed for budgetary limitations, even

though the average age of judges is rising with the unification of the legal profession, and the percentage of single judge cases—which make up the majority of first-instance civil cases—is also increasing. Additionally, there is very little increase in trial support personnel, such as law clerks, and even when there is, the majority of them are assigned to the settlement division of the district court or the high court rather than the single judge. This means that the single judge in the first instance, who is in desperate need of trial support personnel, has very little trial support personnel available to them. Consequently, there is a growing need to strengthen court employees' professional competencies and deploy them as trial support personnel for the single judge of the first instance.

However, the management of court employees in trial or non-contentious affairs, contrary to legal regulations, places an upper limit of grades 5 and below, which is the main reason why it is difficult for the key talent in these areas to find motivation for development, even if they try to advance their expertise in these fields. As a result, there is a concentration of key talents in judicial administration affairs, which mostly involves grades 2, 3, and 4. This situation eventually leads to the trial and non-contentious affairs being treated as inferior to judicial administration affairs. In addition, it was found that, of the quotas for court employees, those for grades 8 and 9 were the highest among national and local government employees in Korea, which is the primary reason for hindering the motivation for professional development, resulting in problems such as stagnance of promotions and proliferating longevity promotions. The survey results show that many respondents believe that professionalism should be the first concern for court employees and that a competitive exam is an adequate means of verification.

In light of the aforementioned, this research proposes that, in the short term, (1) the pre-competency certification system, which is a relaxed competitive examination, be implemented, granting certificate levels 1 and 2 to demonstrate the accomplishments of training and education, and (2) this pre-competency certification system needs to be applied for work training and the selection of candidates for promotion to grades 5 and 7. We also suggested that (3) a secondary path of grades 2, 3, and 4 for each specialty be established to ensure that trial and non-contentious affairs are not treated as inferior and that (4) a system of professional participation officers should be established to improve expertise in the trial and non-contentious fields, and that court investigators with expertise in each field ought to be allocated to courts at all levels to serve as trial support personnel. (5) It also proposes to dualize the rating system, expand the secondment system, and introduce job descriptions to establish an automatically generated job analysis system.

In the medium-to-long term, this paper suggests (1) implementing long-term education and training programs in phases for longer than six months, like in foreign courts, to strengthen expertise in each field while granting internal certificates. In addition, this paper also proposes (2) operating a professional public officials system for a core group of talented individuals who have had their expertise verified by internal certificates, having senior experts (grades 2 and 3), deputy experts (grade 4), and specialists (grade 5) who specialize

only in trials and non-contentious affairs, to address the practical issue of not being able to increase the number of judges and law clerks so that we can realize the speedy and faithful trials that the public wants.

The Korean people decided to receive a faithful trial from experienced judges through the unification of the legal profession ten years ago, and they now believe that the system will be well-settled. For the new system chosen by the people to take hold, it is essential to expand and cultivate a core operating part to run it. No matter how good a system is, its implementation will not be successful if no one is present to operate it or if the operating person does not have the expertise. Only when there is a common understanding and cooperation amongst the legislative, judicial, and administrative constitutional institutions, the world-class justice system that the people desire could be constructed and maintained. We hope that concrete improvements will be made, such as long-term training programs for court employees and expanding the number of court personnel to take on additional duties.

XV Ethics

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1

Research on Judicial Discipline in Foreign Jurisdictions (2015)

Sihoon YANG
Professional Researcher

The significance of the virtues and the competence of judges who constitute the very backbone of a judicial system cannot be stressed enough. The precondition for judges to efficiently perform their judicial functions and thereby earn respect from the general public is the establishment of an environment where they can carry out their duties independently. Nonetheless, too much emphasis on independence can lead to disregard for accountability. The independence of judges cannot be construed as immunity from accountability for their various misdeeds. Therefore, appropriate sanctions should be issued against judges for their misconduct, hence the judicial discipline process.

However, adopting overly arbitrary or strict sanctions against judges can hinder the due execution of judicial duties. Sanctions against judges can be neither too extensive nor too rigorous since a system lacking balance can only bring about the general public's distrust of the judicial system.

A judicial discipline process is in place in Korea. The judiciary has gone to great lengths to make it more just and transparent. Given that the current system is still incomplete, however, a research on judicial discipline in foreign jurisdictions would be able to shed light on ways to enhance our system.

The present research examines the judicial discipline process of nine jurisdictions, including the United States, the United Kingdom, Canada, France, Germany, Austria, Switzerland, Japan and China. For reasons of clarity and comprehensibility, the research was carried out by applying where possible a consistent and systematic approach to comparing the various jurisdictions. The present research goes beyond a mere presentation of facts. Rather, the objective was to provide an abundance of materials with respect to specific methods of administering sanctions, relevant statistics and actual cases. Important implications of the findings from the study of each of the above jurisdictions are presented.

This research would hopefully contribute to reviewing the judicial discipline process in Korea, as well as furthering its development.

2

Judicial Ethics and the Importance of Appearance in the United States (2018)

Hyun Jung SONG
Professional Researcher

The authority of the judiciary ultimately derives from public confidence in the judicial process. Yet, the public have no recourse but to build confidence in the judicial process through the words and deeds of the judge sitting in the proceeding since it is difficult for them to fully comprehend the judicial process and set an apt scale to evaluate the qualification of the judge. Accordingly, the public image of the judge becomes a key factor in establishing the confidence in the judiciary. In this respect, it is indisputable that a judge should not only satisfy independence, integrity and impartiality but also satisfy such appearance.

In the United States, under the premise that the appearance of justice cannot be divorced from justice itself, judges are required to avoid conducts that would undermine independence, integrity and impartiality of the judiciary with significance of appearance. In particular, in the Model Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, there exists a rule that clearly prohibits a judge from engaging in conduct which creates the appearance of impropriety. Under the rule, judges are subject to discipline for creating a perception of wrongdoing even where no actual misconduct occurs. Likewise, a judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence.

Korea has also made continuous efforts to secure public confidence in the judiciary establishing the Canons of Judicial Ethics, setting related rules, and publishing advisory opinions. In so doing, the awareness of judges about judicial ethics has been raised significantly. It is nonetheless true that overall awareness of the importance of appearance created by the judge is still relatively low compared to that of the United States. Furthermore, the issues of judicial ethics such as abuse of judicial authority have continuously been observed through the media in recent years. In these circumstances, the examination of the Model Code of Judicial Conduct of the United States especially focusing on the importance of appearance itself would be helpful to strengthen the enforcement of the Canons of Judicial Ethics and other related rules in Korea.

3

Research on Conflicts of Interest in Judges' Duties and Resolving Methods (2021):

Measures to Ensure the Fairness of Trials Related to the Holding and Trading of Stocks by Judges

Junghwan KIM
Professional Researcher

A public official's conflict of interest refers to a case where a public official has an interest in relation to his/her duties as an individual, not a public official, and such a private interest may inappropriately affect the performance of his/her duties. A number of laws, including the Public Service Ethics Act, have been enacted and enforced to regulate conflicts of interest, but criticism has been raised that these laws have limitations in effectively regulating conflicts of interest. As a result, the National Assembly recently passed the Act on the Prevention of Conflicts of Interest Among Public Officials.

In the case of judges, conflict of interest issues are not a matter to be taken lightly, and one of the major issues in recent conflicts of interest is the holding and trading of stocks (hereinafter referred to as "stock holding") by judges. Nevertheless, it is difficult to say that there has been sufficient discussion on conflict of interest issues related to stock holding and trading by judges. It is also pointed out that one of the causes of these issues is that there are no specific guidelines in place for the holding and trading of stocks by judges.

In relation to the holding and trading of stocks by judges, this research report first examined overseas cases on how to ensure the fairness of the relevant trials, reviewed the current regulations governing the holding and trading of stocks by judges, examined the details of the recently enacted work process guidelines on the restriction on stock acquisition in related fields for each department of the court, and then mentioned additional considerations in the preferred regulatory direction for the holding and trading of stocks by judges and the work process guidelines on restrictions on stock acquisition in related fields for each department of the court.

4

Research on the Regulations of Human Genome Editing (2024)

Yunsun KIM
Senior Judge Researcher

Since the development of the CRISPR-Cas9 system, the remarkable advances in biotechnology using genome editing have led to astounding achievements in the prevention and treatment of diseases, including the improvement of plant and animal breeds, as well as the treatment of rare congenital genetic disorders and cancers. Following the birth of twin girls whose genes were edited in human embryos, international organizations have been endeavoring to establish international standards and strengthen governance around human genome editing, but to date there are no agreed-upon standards for human genome editing. Many countries regulate human embryo research and human genome editing in a variety of ways, depending on their historical and social contexts. The United States, Japan, the United Kingdom, France, and Germany generally do not regulate somatic humanl genome editing, and have amended their laws or guidelines towards allowing human embryo genome editing under certain conditions.

In Korea, the law governing human genome editing is the Act on Bioethics and Safety, which is the basic law for human subjects research. This Act allows limited research on residual embryos, somatic-cell cloning embryos, and parthenogenic embryos for research on rare or incurable diseases, and limits the scope of research on gene therapy to: "Research on a therapy for a hereditary disease, Acquired Immune Deficiency Syndrome (AIDS), or any other disease that threatens one's life or causes a severe disability; Research on a therapy where there is no applicable therapy at present or the effect of a gene therapy is expected to be significantly better than other therapies", and prohibits gene therapy on embryos, eggs, sperm, and fetuses.

After conducting multiple interviews with leading Korean researchers on biology and bioethics, this report points out the problems of ambiguity in the regulations on gene therapy, restrictions on the diseases or treatments that can be studied for gene therapy research, lack of social consensus in the process of enacting and revising bioethics laws as well as shortage of professional reviewers for clinical research and clinical trials on gene therapy, and suggests ways to improve them. In other words, as a way to improve the regulation of human genome editing in Korea, it was proposed to clearly define the meaning of gene therapy; to add precursors of eggs and sperm to the prohibited subjects of gene therapy; to delete the regulation restricting the target disease or treatment method of gene therapy search and instead establish the requirement of gene therapy research on eggs, sperm, embryos, and fetuses, and to obtain permission from an independent permanent professional organization.

It was also proposed to explore various ways to build a social consensus and to increase the number of expert reviewers in preparation for the increase in gene therapy clinical research and clinical trials in the future.

The Act on Bioethics and Safety has served to protect research subjects in human subjects research and in the handling of embryos and genes; however, it does not yet adequately reflect advances in biotechnology and unduly restrics the academic freedom of researchers and the right of patients to self-determination. It is time for both experts and the public to work together to abolish unreasonable regulations and develop new bioethics laws that are appropriate for the technological advancement and the situation of our society.

XVI Digitalization

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1

Research on the Measures to Improve the Trial Affairs Regarding Trial Records and Court Reports (2015)

Hyung.Jin KIM
Judge Researcher

The Korean Court has incessantly tried to secure speediness, transparency, and fairness of the trial procedure in order to have the people trust the court. Under the 「Act on the Use, etc. of Electronic Documents in Civil Litigation, etc.」, the court has been promoting overall electronization of procedure including filing judgment and court reports. Also, the voice recording is now more likely to qualify as documenting method of oral proceeding.

Accordingly, this research tried to focus on the measures to improve the trial affairs, in which the trial parties have submitted paper documents to the court. In Chapter 2, it scrutinizes the current state caused by the enforcement of the system. Chapter 3 introduces electronic procedure and court voice records system in foreign countries including U.S. and Germany. In Chapter 4, it shows the ways to improve the trial procedure using comparative legal approach.

Since the court is bound to use of electronic filing even in the paper litigation, the trial records are divided into paper record and digital record. The records are maintained dually, which means the digital record is managed by the electronic filing system while the paper record is managed by the paper litigation system. The readability deterioration caused by the dual record system can be overcome by an earnest attitude in writing reports and utilizing integrated reports and reports lists.

The court should reinforce the role of court clerks by grading, and construct proper cooperation system with judges by encouraging communication.

The electronic case filing should be phased in step by step and the electronic trial procedure should be systemized in a stable and convenient way. Additionally, sufficient budget and human resources need to be procured to convert paper documents to electronic ones.

Finally, in documenting court pleadings in the form of a voice recording, it needs to make sure the trial contents are not repeatedly recorded. The court could establish effective trial procedure by the proper use of issue lists, procedure agendas, summary reports, and witness statements.

2

Research on the Use of Videoconferencing in Judicial Proceedings (2016)

Inkook KAY
Professional Researcher

Videoconferencing in judicial proceedings refers to the use of virtual communication techniques in judicial hearings to facilitate the right of remote litigants or witnesses to be present at the hearings. The use of videoconferencing is part of a critical stage of development of E-justice, which aims to digitalize and informationize the judicial system. The purpose of this study is to find implications for videoconferencing in judicial proceedings in South Korea by identifying videoconferencing techniques and analyzing the current status of use of videoconferencing in other countries.

At first this study outlines the ways in which videoconferencing techniques are implemented and examines the current status of use of videoconferencing. The examination of the technological issues reveals that absolute perfection in technology is not required for the implementation of videoconferencing in judicial proceedings. It is more important to design an optimal system with a practical technique that is currently available and to supplement it continuously.

Next, this research explores the current status of use of videoconferencing in judicial proceedings in other countries. This chapter emphasizes the similarities and differences between countries, some of which vigorously use videoconferencing in judicial proceedings and others of which have just adopted it. It is important that the primary purposes of the use of videoconferencing in judicial proceedings are to increase efficiency and protect witnesses.

Finally, this research examines videoconferencing that has been implemented for judicial proceedings in South Korea. Based on the examinations on videoconferencing technology and the use of videoconferencing in other countries, it then provides recommendations for promoting videoconferencing in judicial proceedings.

3

Research on Televising and Broadcasting Court Proceedings (2017)

Hojun YEOM
Senior Judge Researcher

According to current law and regulations regarding televising and broadcasting court proceedings, broadcasting in lower instances is permitted either before trial or oral arguments, or during sentencing. Therefore it seems to be the case that broadcasting trials and oral arguments is not possible. The objective of the present research was to examine the theoretical underpinnings of broadcasting court proceedings, and study the practices of other jurisdictions in order to consider the implications for determining the scope of trial broadcasting and developing relevant policies in Korea. Research has shown that a growing tendency to gradually permit broadcasting court proceedings in various foreign jurisdictions can be identified.

In light of the development of information communications technology, the increasing complexity of court proceedings and rise in multiparty litigation as a consequence of societal changes, and based on responses from judges to a survey on the subject, the present research focuses on the conditions and scope of broadcasting that would allow for procedural transparency and fairness of court proceedings, through which public trust in the judiciary can be restored.

The 'Regulation on Court Observance and Photography' should be amended to expand the list of events subject to the presiding judge's approval. Also, depending on the characteristics of a given case the presiding judge should be allowed to exercise more discretion in determining during which stage of the court proceedings to give approval for broadcasting. In cases of special national importance the public's right to know should be guaranteed and historic documentation preserved. It is recommended that audio recording and broadcasting be made more readily available.

With regard to the method of broadcasting court proceedings, it would be rational to time-delay broadcast so as to properly address unexpected events without compromising the need to swiftly provide information. Concerning the method of recording, placing the court in charge of video recording would prevent any potential violations of human rights of the parties to a litigation and courtroom observers. As for the matter of broadcast transmission, along with the channels of existing broadcasting companies, the court would be well advised to use its web page or social network services.

In addition, for the purpose of successfully establishing a court proceedings broadcasting system, it may help to designate certain courts for carrying out pilot programs, as well as

to set up a court broadcasting committee to study and review the policies and rationale for introducing court proceedings broadcasting.

The present research proposes the criteria for preconditions, scope and form of broadcasting, method of recording and broadcast transmission so as to assist in determining whether broadcasting court proceedings in lower instances should be approved in the future. Hopefully this research can contribute to making sound policy decisions on broadcasting court proceedings.

4

Research on Cooperation of Legal Information between the Legislature and the Judiciary (2018)

Jung Eun LEE
Dispatched Researcher

There is a need for the cooperative sharing of legal information between the legislative and judicial branches, as it is a way of reciprocal cooperation that contributes to each respective branch that serves their inherent functions by expanding the sharing of legislative and judiciary information, based on an intrinsic relationship of cooperation that seeks to accomplish the common goals of a nation's legal system.

The judicial branch can seek to improve the outcomes of judicial rulings such as the accuracy and democratic nature of trials by utilizing legislative information, and improve rules that govern the trial process by sharing judicial information; the legislative branch can strengthen the binding power of democratic, intentional law-making through providing legislative information, and utilize judicial information to enhance the quality of the finished legislation.

However, South Korea's current state of cooperation on sharing legislative and judicial information faces difficulties in information production and distribution that fail to deliver adequate information. Even utilizing legislative and judicial information is limited by several restrictive factors.

In other countries, the form of cooperation in sharing legislative and judicial information seems to differ by the respective country's political system, legal environment and other factors; the United States and Germany, among others, appear to offer sound legislative information through systematic legislative material, while the sharing of judicial information appears to be maintained by limited cooperation according to each country's situation, restricted by the principle of the separation of powers.

There is a need for stronger cooperation between the legislative and judicial branches to share legal information when considering the opportunity cost on national and societal benefit. But concrete methods of cooperation must be reasonably sought in a flexible, less burdensome way that sets up a system of cooperation that fits the situation, with realistic limitations such as the restrictive effect of the separation of powers in mind. In order to set up a system of cooperation, there needs to be improvements in the production and distribution of legislative information as well as a systematic improvement of the legislative process itself; for judicial information, a systematic way of providing judicial information must be established.

5

Policy Study for the Introduction and Acceptance of Artificial Intelligence Technology in Judicial Procedures and Services (2021)

CheaYun JUNG
Visiting Researcher

As artificial intelligence (AI) technology is commercialized in various fields in the intelligent information society, the possibility of using AI in judicial procedures and services is also being discussed in earnest. Accordingly, this study explored the theoretical and practical considerations for the introduction and acceptance of AI in judicial procedures.

First, this report discussed the current status of the use of AI technology in judicial procedures of several countries, including China, Singapore, the United States, Australia, the United Kingdom, France, Austria, the Netherlands, Estonia, and Latvia, which are leading the intelligent informatization and digitalization of the judicial branch.

Next, the report examined the basic premises that should be considered in order to utilize AI technology in the judiciary and to devise the appropriate judicial policy. Specifically, it reviewed the relationship between predictive justice based on AI's automated judgement and the judicial decision-making of human judges, suggested the key ethical issues in the use of AI in the judicial field, and summarized the ethical charters and guidelines for future reference.

Furthermore, the report suggested the probable areas and fields where AI technology is applicable in the judicial system. In civil proceedings, the access to justice is the major consideration, and self-representative lawsuits and ODR procedures are the areas with high potential for the use of AI. In criminal proceedings, the application of AI in the fields of sentencing and bail is being considered, and the principle of rule of law should be rigorously upheld.

6

A Study on Proper Operation and Transcription of the Court Proceedings by Utilizing Courtroom Audio Recording (2022)

- Focusing on the Expansion and Improvement Plan of the Recording System -

Minhyung LEE
Judge Researcher

The Supreme Court has established the concentrated trial system through oral arguments as a desirable model for trial, and has adopted courtroom audio recording as its well-matched documentation. Since 2015, courts across country have been running recording systems. Currently, courtroom audio recording is required as a mandatory process in such a procedure as the witness examination in case when testimony or statements during cross examination constitute the primary evidence, and thus recordings are to supersede transcripts. In the initial implementation stage of the mandatory recording system, not only some reluctance incurred from an unfamiliar documentation medium but also a practical confusion arouse from different process management by respective court panel. However the mandatory recording system has been well integrated into the trial system in the lapse of six years, securing system's stability as well as bringing about positive evaluations from legal circles in terms of contributing to activation of oral arguments through accurate and vivid documentation of statements. While courtroom audio recording is also available for other legal procedures ex officio or upon party's request, its frequency of use in practice is relatively low, instead with heavy reliance on summarized transcript as the usual means of documenting oral arguments. Public opinion insinuating distrust in trials calls for the accurate recording through technical means of audio/video recording in order to institutionally guarantee a fair process, and also both the National Assembly and the press put stress on the need to establish a permanent system for trial observation aiming at legitimate oversight of judicial power. In the face of unfriendly external ambience surrounding the trial and the public views, the judiciary needs to exert itself in expanding an arena and building a system for making trials open to the public in a more preemptive and affirmative posture. Such efforts can start from expanding the scope of courtroom audio recording proven to be suitable for documenting oral arguments. The impact from this expansion goes beyond enhancing the transparency of trials, consequently leading to facilitation of building court's conviction through inducing substantiation of oral arguments as well as strengthening trial capacity derived from lessening practical burdens in the protocol redaction. On the court's part, in order to accommodate the changed landscape of trials, system refurbishment and improvement measures are required in preparation for expanding the scope of mandatory audio recording, which includes establishing the relation between transcript and recordings, appropriate management of recordings, desirable management of trials when recordings are used, and technical solutions for enhancing the value of recordings.

XVII Specialization

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1

Judicial Specialization after Adopting Common Law Appointment System in Korea (2021)

Chan Young YOON
Senior Judge Researcher

The primary role of the judiciary is to adjudicate disputes that come before it and provide legal remedies for those whose rights were infringed through fair trials overseen by impartial and independent judges. In modern society, where legal disputes are more complicated due in part to enormous economic growth and the development of various sectors in society, the judiciary is also responsible for the full realization of the people's right to a fair trial by enhancing quality and efficiency of justice through specialization.

With the revision of the Court Organization Act in 2011, South Korea introduced a new judicial appointment system, modelled after the common law appointment system, that unified the legal profession by selecting judges from practicing lawyers and prosecutors who possessed sufficient legal experience. The need to "appoint" judges with specialized knowledge and experience to ensure expertise in trials has, therefore, become more important than the need to "train" existing judges to become specialized. In order to encourage excellent legal professionals with special knowledge and experience to apply for judgeships, the judicial system should assign judges with specialized knowledge to specialized courts or divisions where they could continue working within their area of expertise. This would be possible only when the current personnel system for judges is reformed so judges selected for each specialized field could work for a long time at the same court or division.

Such required reform can be achieved effectively only when the reform is carefully designed considering the entire judicial system, as well as the existing personnel system and the judicial practice of case assignment among judges. In order to provide more specialized judicial service, the Judiciary of Korea has established specialized courts, such as patent court, family court, administrative court, insolvency court, and other various specialized chambers in general courts. In addition, in order to diversify judges, the Judiciary of Korea has implemented a system of appointing specialized judges, via personnel transfer, who can serve long periods of time in family courts, and a system of judges in charge who are exclusively responsible for specific types of cases, such as small claim cases in general courts. Individual specialized courts have also been developing internal systems to strengthen their own specialities. Despite all of these efforts for specialization, the current personnel systems for judges have caused limitations in improving the specialization of the judiciary. That is, the current centralized method of appointing judges nationwide without giving individual courts the discretion to select judges makes it difficult to recruit

professional judges in each specialized field. Moreover, under the current system, judges rotate every 2-3 years between courts, making it impossible for judges to continue their work on similar types of cases for a long time at the same court. These systems have been fundamental barriers to the judicial specialization in Korea.

Systems for recruiting and appointing judges varies among different legal systems. Since the judicial appointment system of Korea is in a state of transition from the European civil law system (where judges are appointed immediately following a judicial training program) to the English common law system (where judges are selected from practicing lawyers and prosecutors who possessed sufficient legal experience), it would be helpful to examine different ways for the specialization of judiciaries of both common law countries and European countries to lay groundwork for institutional designs. This research thus conducts comparative legal research on the judicial specialization in both civil law countries (i.e., Italy, France, the Netherlands, Austria, Germany, Denmark, and Sweden) and common law countries (i.e., the United Kingdom, Canada, Australia, and the United States). In particular, lessons can be drawn from the English judicial selection process, by which judges were appointed for each particular area, and from their system for diversification of judges, by which fee-paid part-time judges were utilized in various specialized areas. Implications could be also found from the European countries' systems that are based on the non-transferability provisions, under which judges may remain in their post to work on similar types of cases continuously at the same court. It is also noteworthy that some European countries have adopted assistant judge or deputy judge system for areas that require specialized knowledge; this system contributes to the diversification of judges and the effective training of judges with special knowledge. The implications drawn from the comparative legal analysis may shed light on how Korean courts could enhance judicial specialization.

The Judiciary of Korea should endeavor to improve quality and efficiency of trials through specialization; however, it should not forget that specialization is a means for the full realization of the people's right to a fair trial. It should be also kept in mind that the specialization of judges shall not damage the impartiality of judges and independence of trials, and other necessary costs and existing judicial conditions of specialization must be carefully considered as well as its effectiveness.

2

Research on the Integrated Dispute Resolution Procedure of the European Union (2021)

- Focusing on Order for Payment and Small Claims Procedure -

Daegyu SUNG
Professional Researcher

1. Although Korea, China, and Japan have been struggling with political, historical, and ideological conflicts since World War II, the three states have nevertheless been steadily building economic cooperative relations. Such economic cooperation between the three states will consequently require judicial cooperation in legal matters; resolving disputes between transacting parties residing in different states to compensate damages expediently will be the main goal of judicial cooperation, especially in the area of private laws.

It is not easy to resolve private law disputes arising between the transacting parties residing in three different states under today's legal systems. This is because even if a party to a dispute files a suit in its domestic court and wins the trial, the judgment needs to be recognized and enforceable in other states where the other parties reside. However, there is no integrated legal system for such recognition and declaration of enforceability of foreign judgments between the three states today.

Since the European Union (EU) has established the integrated civil execution system, useful implications could be found by examining the EU system in place today.

2. European states have long tried to achieve regional integration in various fields such as politics, economy, society, and culture, and the EU is the result of such efforts. In particular, the EU has endeavored to establish an EU-level integrated judicial system among member states in the process of its formation and development, and accordingly, it has established an integrated civil execution system in the judicial field. The EU has established the Brussels Regulations (Brussels Convention, Brussels I Regulation, Brussels I Regulation (recast)) and, in addition, enacted the European Enforcement Order Regulation, the European Order for Payment Procedure Regulation, and the European Small Claims Procedure Regulation.

The most striking feature of the EU's integrated civil execution proceedings is that they have been developed to continuously simplify and accelerate the recognition and enforcement of judgments rendered by foreign courts. That is, (1) pursuant to the Brussels Regulations (Brussels Convention, Brussels I Regulation, Brussels I Regulation (recast)), the recognition and declaration of enforceability of another member state are required to enforce a judgment rendered by courts of one member state in another member state.

(2) By contrast, pursuant to the European Enforcement Order Regulation, for uncontested claims, a judgment can be circulated in all member states by certifying the

judgment as European grounds for enforcement at the request of the party without the need for recognition and declaration of enforceability. Because the recognition and declaration of enforceability in other member states have been omitted in the European enforcement order procedure, the execution in the member states can be made simpler and faster than that under the Brussels Regulation.

(3) In comparison, the European Order for Payment Procedure and European Small Claims Procedure simplify and expedite the execution of foreign judgments even more than the European Enforcement Order Procedure. Under the European Order for Payment and Small Claims Procedure, a foreign judgment itself takes effect as a European ground for enforcement even if the parties do not apply for the certification as European grounds for enforcement of the judgment.

The EU's integrated civil execution procedures, particularly the European Order for Payment Procedure and European Small Claims Procedure, are systems designed to simplify and expedite disputes in civil and commercial cases, which could provide implications in preparing for the similar integrated civil execution procedures between Korea, China, and Japan.

3. When the so-called "Korea-China-Japan Order for Payment and Small Claims Procedure" are enacted in the future, several points need to be kept in mind in deriving implications from the European Order for Payment Procedure Regulation and the European Small Claims Procedure Regulation (hereinafter referred to as the "Two Regulations").

(1) The Two Regulations took about 40 years to enact, and above all, they were created on the premise of trust between member states in the other states and their legal systems. By contrast, it cannot be denied that there are still political, historical, and ideological conflicts between Korea, China, and Japan. Moreover, it is difficult to say that trust in the other states and their legal systems has been formed between the three states today. Since these are not problems that can be solved in the short term, the three states will, first and foremost, need to establish a judicial trust relationship for economic cooperation.

(2) Before the Korea-China-Japan Regulations on Order for Payment and Small Claims Procedure are actually enacted, comparative legal research on order for payment and small claims procedure in each state should be conducted. Based on that comparative legal research, the three states should establish the overall framework and detailed provisions required for each stage of the procedures, considering the problems that the Two Regulations have or will likely have based on the review of Europe today. Such problems concern, for example, representation by an attorney-at-law, the value of a lawsuit's object, fees such as stamp amounts, standard forms and linguistic issues, service methods or evidence collection, and appeal procedures.

(3) In operating the integrated order for payment and small claims procedure, measures to increase the utility of the procedures should be devised. For example, it appears that the frequency of use of European small claims procedure is not relatively high—only three

applications per year in certain states. This raises fundamental doubts about the necessity of the integrated dispute resolution Procedure. Therefore, when Korea, China, and Japan operate the Integrated Order for Payment and Small Claims Procedure, European examples should be referenced so that measures to increase the utility of both procedures are devised. For example, holding remote video hearings could be considered as a convenient alternative in remote trials among different states.

3

Judicial Remedy Procedures for Social Security Cases and Recommendations for Procedural Improvement (2022)

Woo Kyung PARK
Professional Researcher

The demand for social protection is expected to grow due to social changes. We are experiencing changes in demographic structure, employment relationships, and family relationships. However, there has been little public awareness of social security cases in South Korea. Social security schemes should be based on the reason of State(la raison d'État), which guarantees the basic conditions of people's lives. Low awareness of social security cases seems to reflect relatively low public concern for the basic living conditions. Reviewing the procedures for social security appeals has the significance of preemptively preparing for the social security reform and reminding the responsibilities of the State of the people.

The objective of this study is to provide a comprehensive overview of the current social security appeals procedures in South Korea and to draw policy implications for making better judicial procedures. Social security litigations in South Korea can be categorized into those related to social insurance, public assistance, social compensation, and social welfare. In order to increase access to justice, a comprehensive understanding of the current state is required. This study focuses on the status quo of appeal procedures.

The research question is to what extent social security cases are resolved through courts in Korea. It primarily depends on whether the complaints and appeals process is clear and accessible. In order to answer the question, the chapters describe the nature and characteristics of social security cases reviewed in the context of examining the system of social security law (Chapter 2), the social security case appeals procedure, including administrative and judicial procedure (Chapter 3, Section 1), current status and characteristics of judicial procedures of social security appeals (Chapter 3, Section 2), and how social security cases are dealt with in developed countries (Chapter 4).

The main findings of this study are the following:

Administrative complaints and appeals about social security benefits are differently processed according to the relevant laws. In order to prevent any possible confusion, administrative complaints and appeals procedures are in the need for structural reorganization. In terms of judicial procedures, although most of the social security cases are resolved through administrative litigation in courts, they are distinct from general administrative litigation. Relevant laws are complex, vast, and frequently revised, which makes it difficult even for experts to accurately understand the contents. Parties to social

security cases are especially in need of social protection as administrative decisions often have a long-term effect on their economic life (Chapter 2).

Administrative remedies have advantages over judicial remedies in that simple objections are possible and results can be received within a short period of time. However, systematization between the procedures has yet to be achieved. Most social security cases are handled as administrative litigation in courts. In this study, administrative litigation procedures are reviewed focused on the method of filing a lawsuit, the court of competent jurisdiction, filing period, representation in litigation, litigation costs, etc. In terms of procedures in civil litigation, injunctions granted at the discretion of courts are recognized under the Act on the Prohibition of Discrimination against Persons with Disabilities. Other domestic remedies include the complaint process of the National Human Rights Commission and the order for correction from the Ministry of Justice, which are also recognized under the Act on the Prohibition of Discrimination against Persons with Disabilities (Chapter 3).

There exist different types of courts that have jurisdiction over social security cases. In many countries, judicial courts handle social security cases (Type 1). Some countries have specialized courts (Type 2). Some others have administrative proceedings or tribunals handle most of social security cases and courts exercise limited jurisdiction. In this study, the cases of France (Type 1), Germany (Type 2), England and the United States (Type 3) were reviewed. While differences appear among them, many similarities are found in basic principles. Accordingly, two or more countries' appeals systems share the following characteristics :

- Simple, convenient, and easy procedures are provided for parties to social security cases. For example, complaint forms are easy to fill out and jurisdiction is conferred on the court of the domicile of the plaintiff.
- Effective remedies are available. For example, interim measures and injunctive relief are granted by courts.
- Claimants bear minimum costs of litigation. If they are unable to afford to pay for legal costs, they may apply for legal aid.
- Until a certain level of the appeal process, plaintiffs are allowed to defend themselves without the help of an attorney. For this purpose, even if the person is not a lawyer, persons with certain qualifications (e.g., family relationship, workplace relationship, public interest group, etc.) governed by specific legislation are able to assist or represent the party in a social security case (Chapter 4).

Based on the aforementioned findings, this study proposes the introduction of interim measures, injunctive relief and reconciliation recommendations in administrative litigations. It is also important to provide plaintiff-friendly complaint form in courts and make rules to minimize the cost of litigation for plaintiffs. Some of the ideas are for the relatively distant future. It would be desirable to adopt the system of jurisdiction conferred on the court of the plaintiff's domicile, representation by non-lawyers, and lay assessor when the systems of social security adjudication and litigation are well-established. In terms of court organization

and administration, it would be necessary to establish social security chambers in courts and training programs related to social security litigation in Judicial Research and Training Institute. Once the social security chambers are established, detailed statistics would become available as well. Lastly, it is necessary to expand the Legal Access Center in courts to substantially support the socially disadvantaged individuals.

XVIII Judicial System Operation

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1

Research on Contempt of Court in Overseas Jurisdictions (2015)

Minkyung HA
Professional Researcher

The present research was conducted on the law of contempt of court by using a comparative law analysis for the purposes of protecting judicial order and establishing rule of law.

As an introductory part, Part I examines the current legal system and recent cases in Korea that served as premises for undertaking this research. It also identifies the standard for classification of types of contempt of court.

Part II studies the contempt sanctions of various states on actions that pose a threat to orderly judicial proceedings. For example, under Anglo-American law, it is allowed for a judge to punish summarily an individual who committed direct contempt while the same act does not constitute a crime under German Law.

Part III focuses on the legal systems where defiance of court orders is treated as contempt of court. Since it is axiomatic that continued disobedience or insubordination against court decisions undermine the very foundation of the law, this research suggests that contempt of court can be an efficacious solution for enforcing court orders.

Part IV addresses the necessity of regulating actions that impede the judicial system, such as filing frivolous lawsuits and scandalizing the court by maliciously criticizing it. Pursuing a frivolous lawsuit and scandalizing the court call for contempt sanctions because they prevent the adequate administration of trials.

In conclusion, Part V summarizes the contempt sanctions of UK, US, Singapore, Germany, France, and International Courts thereby providing each system's characteristics at a glance.

By introducing and analyzing the law of contempt of court in overseas jurisdictions, this research proposes a way to rebuild the rule of law that would guarantee the citizens a fair trial as a constitutional mandate: imposing various types of contempt sanctions on recalcitrant individuals who are regarded as to obstruct the administration of justice.

2

Research on Practical Training for New Admittees to the Korean Bar (2016)

Yoonjung KIM / Sihoon YANG
Judge Researcher

Seven years have passed since the first group of students was admitted to law schools in 2009 via the Act on the Establishment and Management of Law Schools that was enacted on July 27, 2007.

Although the specifics of practical training system for legal professionals vary among countries that have different cultural, historical and political background, these systems all serve the same purpose of cultivating well-qualified legal professionals.

This research focuses on the practical training for attorneys newly admitted to the bar. In particular, this research aims to identify the problems and implications of Korea's current training system for legal professionals, in order to ultimately offer suggestions for devising a better system that could better serve the intended purpose of providing practical training to cultivate well-qualified legal professionals.

In order to provide recommendations for improvement, the research conducts a comparative analysis of the developments of training systems among different countries, including the United States, the United Kingdom, Germany, France, Japan and the Netherlands. The comparative analysis highlights the context, key features, and implications of the various training systems. The study particularly emphasizes Japan due to the similarities of its legal environment with Korea, as well as the fact that Japan had gone through a similar reform process of their training system before that of Korea.

The research then takes a look at the pros and cons of different practical systems by analyzing interviews with lawyers practicing in Japan and the United States, where additional practical training is required after the bar exam in the former, but not required in the latter. The research then examines interviews with Korean lawyers who received practical training under the current system with regard to the strengths, weaknesses, and implications of the current programs in operation.

This research concludes with suggestions to improve Korea's current practical training programs for attorneys newly admitted to the bar, based on the professional advices from law school professors and Korean and foreign lawyers.

It is important to note that the scope of this research is only limited to the training programs for attorneys newly admitted to the bar, and the question whether the Korea's previous national bar examination should be maintained or abolished is not within the scope of this research.

Determining how to train legal professionals requires in-depth discussions with a diverse group of people since this is not a purely private matter, but a public matter that is closely related to every citizen's constitutional right to have a fair trial. This research hopes to make an important contribution to the development of a more effective practical training system for legal professionals in Korea.

3

Study on Improvement Measures for the Filing Fee System and Related Practices (2019)

Hyejeong LEE
Research officer

Paying a filing fee for using a court for litigation is the first obligation that is imposed by the court on anyone filing a lawsuit. Since filing fees are one of the first things people consider when evaluating court costs and since they affect the ability of people to exercise their right to a trial, as guaranteed by the Constitution, it is important to create policies that ensure that filing fees can properly fulfill their role of helping cover judicial fees and prevent abusive litigation.

This study categorizes the filing fee system into several areas to identify area-specific problems and suggests solutions that focus on the area-specific functionalities of filing fees.

Above all, this study: suggests a plan that defines the basic functionality of filing fees as 'payment'; considers the problems associated with the litigation price sliding system; proposes a per-case or per-jurisdiction fixed price system as an alternative; and suggests a pilot launch of a fixed priced system for cases that fall under the Trial of Small Claims Act. In addition, this study examines the roles of the filing fee system to improve preservation disposition procedures and presents arguments for the official introduction of a price sliding system for litigation. Also, this study discusses and proposes solutions to the problems associated with the indiscreet introduction of a tax base, such as for land/asset appraisal, as a basis for taxation and real estate polices (used for the calculation of litigation filing fees) into the trial system, which is marked by disparate domains.

In this study, a review is also conducted to analyze whether the government should be exempted from paying filing fees that it would otherwise be required to pay. This study also examines and recommends case dismissals and closures as reasons for refund of filing fees, as a means of implementing a system that fulfills the intended functionalities of filing fees as covering charges associated with the use of judicial services.

Additionally, this study discusses and presents suggestions to improve the fee policy adopted when electronic litigation (for which discounted filing fees apply) was introduced, and suggests that the value of automated court services be recalculated before the electronic litigation system is in full operation.

As a supplementary discussion, a vexatious litigant list management system is proposed as a measure to prevent nonpayment of filling fees and abusive litigation for unjust purposes. The proposed system seeks to ensure the efficient investment of judicial resources to contribute to the further development of the judicial environment, so that people's right to a

trial, as guaranteed by the Constitution, can be properly exercised.

It is hoped that this study, which highlights the problems of the current filing fee system, can help guarantee people's right to a fair trial and improve the overall credibility of the courts.

4

Research on Judicial Reform of China (2019)

Hyunbum KIM
Judge Researcher

China and South Korea have been actively engaged in exchanges in various fields, maintaining a close relationship historically and geographically. Especially, the economic growth that China has achieved after the reform and opening-up policy has led to a rapid expansion in the economic exchange between the two countries which is now the core of bilateral exchanges. The expansion of exchange has consequentially increased the possibility of disputes between the people of China and those of Korea. Judicial procedures to resolve such disputes are an essential prerequisite for the stable and continuous development of economic and social exchanges between the two countries. In this respect, a mutual understanding of both countries' judicial systems should be preceded.

Since China adopted the "Management of State Affairs Under the Rule of Law (依法治國)" as a new governing policy in 1997, the Supreme People's Court of China, through continuous judicial reform, has sought to establish basic directions for the socialist judicial system, ensuring harmony between the leadership of the Chinese Communist Party and the independence of trials, and to overcome the backwardness of the judicial system, solving problems related to the judge's lack of expertise which has long hindered the judicial reform. Through these continuous efforts, the Chinese Court has made great advances in the areas of the litigation process and the litigation system by remarkably strengthening the expertise of the judge. Furthermore, the court has considerably enhanced the transparency, efficiency, and unity of trials, thereby building a relatively high degree of trust from the people. Based on these improvements, China is seeking to play a leading role in the future generation of judicial system through establishing a judicial system better suited to the information age as well as a globalized judicial system in a manner commensurate with its high economic status worldwide and raising the international awareness and influence of its own judicial system.

Nonetheless, there are still many people in Korea who regard China as a judicially undeveloped country and neglect its advancements, without being fully aware of the reality of China's judicial system which is changing dramatically. The judicial system of China is, of course, inherently different from that of Korea in that China keeps to people's democratic despotism which denies judicial independence and the separation of powers. And also basic values pursued by the judicial system of China and Korea are distinguishable in a way that China still prioritizes social stability over the liberty of individuals. Thus, Korea should be careful about simply introducing the Chinese judicial system as it is into the Korean system. However, the Chinese Court has forged a distinctive judicial system through continuous

judicial reform and has tried to expand its global influence in the judicial area with immense economic power. Under these circumstances, there would be undesirable consequences nationally and socially if Korea, which has a close relationship with China, chooses to neglect or disparage China's judicial system.

This research paper introduces a wide range of reform measures and methods implemented by the Chinese Court in order to promote an accurate understanding of the problems and current changes in the Chinese judicial system. The Chinese Court's various reform measures that are being competitively researched and experimented by more than 120,000 Chinese judges can be used as reference materials for the Korean court in setting the directions for reforms to cope with social changes and to meet the expectations of the people. For the past several decades, the Chinese Court has made considerable efforts to improve the procedures and methods in reforming the judicial system, and China's methods for judicial reform can also provide meaningful implications for the improvement of Korean court reform. Hopefully, this research paper would contribute to more active research introducing concrete and detailed contents of various reform measures implemented by the Chinese Court.

5

A Study on Countermeasures Used by Courts Against Large-Scale Disasters (2020)

Daegyu SUNG
Professional Researcher

We live in a world full of risks. Risks constantly threaten our lives, health, and property, and have resulted in destruction of our society and environment. In particular, the Pohang earthquake that occurred on November 15, 2017, and the Sokcho wildfire that started on April 4, 2019, have given courts of Korea an opportunity to ponder how to prepare for and respond to a large-scale disaster. Accordingly, this study aims to discuss countermeasures used by courts in the event of a large-scale disaster.

In the event of a large-scale disaster, countermeasures used by courts may be stipulated in the form of two kinds of manuals. One is a manual for courts' first disaster response, and the other is a manual for courts' continuity of operation. Today, to some extent, the former has already been prepared, whereas the latter has not yet been written.

As for the existing manual for courts' first disaster response, in the cases of the Pohang earthquake and the Sokcho wildfire, problems have been identified in four areas: litigation records, registration services, court workers who are vulnerable to safety risks, and insurance for disaster recovery.

Courts are currently not prepared for the secure and ongoing transfer of litigation record in the event of a disaster; however, there are steps that can be taken to prepare. First, when a new data center is built in the future, the seismic isolation design of the building must be focused on protecting facilities such as servers in the data center. Second, problems arising from electronic records not transmitted to the primary data center located in Bundang and the disaster recovery (DR) center located in Daejon may be solved by using the "drive-away kits" required by the manual for courts' continuity of operation. Third, paper records and documents must be transported directly, and the sequence of transportation must prioritize paper records and documents based on risk.

The reversal problem of the registration order caused by a disaster with respect to the registration services may be solved by complying with the Registration Service Guidelines for Provision of Emergency, which stipulate "how to handle the case where a written application for registration is impossible because the real estate registration system cannot be operated due to a power failure, damage to the computer network, or failure of the computer system in a registry office."

Regarding the vulnerability of court workers to safety risks, in the event of a disaster, administrators, those who can evacuate by their own efforts, and those who cannot evacuate

by their own efforts should familiarize themselves with the prearranged "Manual for Evacuation in the Event of a Disaster", or should protect themselves from a disaster by implementing the manual quickly and accurately, at least in an emergency.

Regarding insurance for disaster recovery, when developing a "Courts' Disaster Response Regulation", it must be ensured that provisions on such an insurance are stipulated in the regulation.

The manual for courts' continuity of operation may be implemented in accordance with Worksheet A to Y of this study based on the U.S. and Japanese literature.

Lastly, the aforementioned manual for courts' first disaster response and manual for courts' continuity of operation do not have applicable grounds today. However, for unified and systematic disaster response, it is necessary to prepare a "Courts' Disaster Response Regulation" that can serve as a ground for establishing two response manuals. In that case, the content of the regulation may be determined based on the Framework Act on the Management of Disasters and Safety, and such a regulation may be prescribed in the form of a Supreme Court regulations.

6

Cognitive Errors in Judicial Decision Making and Measures for Debiasing (2020)

Jong Youp LEE
Senior Judge Researcher

Trials require that judges render judgments under uncertainty because they are asked to reconstruct historical facts using often ambiguous evidence. A study on judgment and decision making conducted by Kahneman et al. in the early 1970s found that humans commit systematic errors depending on heuristics under such uncertainty. Judges, as experts in legal judgments, have embodied schema through legal training and experience, but empirical research has shown that they are vulnerable to cognitive errors due to heuristics and human biases. Therefore, it is critical for judges to adopt strategies to reduce cognitive bias. To this end, it is desirable for judges to have a bottom-up strategy that examines intuitive and deliberate judgments carefully and closely, as well as the evidence, rather than a hypothetical top-down strategy. Furthermore, multiple experiments suggest that, contrary to popular belief, actuarial judgments yield better results than holistic judgments.

Judges are affected by various heuristics and cognitive errors, such as framing, loss aversion, probability judgment, illusory correlation, base rate neglect, conjunction fallacy, representative heuristic, hindsight bias, anchoring, attribution error, inverse fallacy, availability heuristic, confirmation bias, overconfidence, story model, and egocentric bias, at each stage of case. These stages include: (1) understanding of the facts and recognition of the issues; (2) judgment of the relevance and validity of evidence; (3) judgment of the defendant's responsibility; (4) information process and judgment; and (5) attempts to resolve a dispute with a settlement. Such judgment errors are normally confirmed by identifying differences between laws of logic and normative standards for probability theory, etc. In particular, insensitivity to probability theory, specifically, misunderstanding the difference between base rate neglect and false intuition about randomness may directly lead to the false evaluation of evidence.

Also, because a trial has the underlying binary nature of plaintiff-defendant, acceptance-rejection, and guilt-innocence, trials are subject to representative heuristics that judge a category according to the similarity or representativeness of the object being judged. Numerical information, such as a claim amount or the demand of a sentence suggested during a trial, also serves as an anchoring for the judgments of judges. This is a result caused by biased access to information that matches the anchor and, therefore, judges try to adjust from the anchor to a reasonable target value, but this adjustment is always insufficient. An orderly, logical argument that can be easily understood in a trial appears plausible depending on the availability heuristic, which might be irrelevant to the validity of the evidence. Courts

are particularly vulnerable to hindsight bias because they ordinarily determine responsibility for incidents after the fact. Since the hindsight bias reflects a human's intrinsic cognitive disposition, the bias can be minimized by an objective behavioral criteria as a reference point of judgment rather than intuitive judgment based on the past point of view. In a criminal judgment, the probability that the accused is guilty when there is evidence of guilt and the probability that such evidence exists on the premise that the accused is guilty are easily confused, which is the result of the influence of inverse fallacy. However, since there are so many examples where the probability values of P(H|D) and P(D|H) are extremely different, this not only yields a representational probabilistic error, but also has a great impact on the quality of actual judgment. The confirmation bias refers to the tendency to selectively seek only evidence corroborating the hypothesis rather than disproving it. The confirmation bias therefore makes judges treat contradictory evidence as an exception rather than as a question of the accuracy of the hypothesis and exclude contradictory evidence from the explanation or evaluate discriminatorily by applying rigorous examination to evidence that contradicts the hypothesis.

Debiasing from such cognitive error is crucial to restoring confidence in trials. However, many empirical studies show that the recognition or warning of the possibility of cognitive bias or the cognitive effort to avoid bias does not reduce errors. It is important not to overlook the importance of debiasing because the motivation for accurate judgment or the recognition of Heuristics and Biases enable judges to know when heuristics shouldn't be used, and education and training about debiasing makes it possible to use debiasing strategies. Among debiasing methods, important strategies that are known to be effective include the use of "think the opposite" and linear models, and the adoption of outside views. In particular, think the opposite can extend a hypothesis sample to opposite alternatives that are "unrelated" to the original hypothesis, which helps to form a more representative hypothesis. Since trials are designed to reduce bias, the adversary system, cross-examination, the principle of written indictment only, the exclusion of character evidence, the principle of ex post facto prohibition, and the recognition of limited admissibility of forensic evidence may suggest that such debiasing strategies have been institutionally accepted.

It is a mandatory duty for judges to know the content of cognitive errors and make an effort to think objectively and reason deliberately to reach an accurate judgment. However, since simply knowing the content and cause of cognitive errors has limits in preventing biases, judges must adopt the correct cognitive strategies and judgment tools—an important goal for the study of legal judgment and decision making.

7

Research on Improving the Procedure for Final Appeal (2020)

- Focusing on Recommendations to Adopt Systems of Submitting Written Statements of Grounds for Final Appeals to the Lower Court and Restricting Reappeals to the Supreme Court -

Young Jae KANG
Judge Researcher

An excessive number of cases have been and are being filed in the Supreme Court of Korea, which has limited human and material resources. Accordingly, there have been and are still discussions about the necessity for reestablishing the role of the Supreme Court of Korea, which is the highest court that reviews conclusions of law, and redesigning the system of final appeal to protect the rights of the people in the most efficient way possible. Discussions so far have, however, mainly centered on the structural framework change of the final appeal system. This research is distinct from existing studies in that this research focuses primarily on examining and proposing ways to improve the procedure for final appeal.

As the first way to improve the procedure for final appeal, this research proposes to change the procedure to submit a written statement of grounds for final appeal to the lower court, rather than the Supreme Court. By doing so, the lower court will have some leeway to review whether a written statement of grounds is submitted within the appeal period, and to examine the legality of the grounds for appeal, so that the Supreme Court of Korea will be able to focus more on cases that deserve to be judged by the court of last resort. In order to derive implications from comparative legal research, this research examines systems of Germany and Japan, both of which have adopted the system of submitting a written statement of grounds for final appeal to the lower court in certain cases, and it also examines procedures for final appeal in the U.S., U.K., and France. Based on this comparative analysis, this research examines some details to be addressed when the system for submitting the grounds for final appeal to the lower court is adopted in Korea, such as how to set the due date of the submission, and to what extent the role of the lower court should be established, and proposes specific suggestions on each item.

Secondly, this research proposes to restrict reappeals to the Supreme Court. The Supreme Court of Korea has final jurisdiction over the reappeals that were made against the lower courts' decisions or orders on procedural matters. It is, however, not advisable that the highest court reviews all the decisions and orders as long as there are conclusions of law without further restrictions. Moreover, a system where the highest court reviews all decisions is unprecedented in other countries. There is, thus, a need to consider the adoption of a system that restricts reappeals to the Supreme Court of Korea. This research offers two proposals for improving the efficiency of the review procedure of reappeals. The first proposal this research suggests is that when a reappeal is filed against lower courts' decisions

or orders, lower courts shall first review the grounds for reappeal and decide whether there are grounds for reappeal. Under this first proposal, the reappeal shall be reviewed by the Supreme Court only when the decision to reject the reappeal by the lower court is appealed again. The second proposal this research offers is to allow the Supreme Court to review reappeals only in important cases. Each proposal will be discussed in detail and specific suggestions will be offered.

It is expected that this research will contribute to improving the system for final appeal, accelerating the implementation of the improvement of the procedure to submit final appeal, and encouraging discourse on the system of restricting reappeals to the Supreme Court.

8

The Study on Judicial Workload and Influencing Factors (2021)

Boram HONG
Professional Researcher

Reasonable judicial workload is a key element for providing a "decent trial" to the public. Judicial performance is closely related with physical and mental competence of judges. Judges weathered by the excessive workload would find difficulties in performing his or her duties with optimal competence. Managing judicial workload at an appropriate level results in a better judicial performance. In this regard, the right to a fair and speedy trial, and improving public trust and confidence in the judiciary is deeply relevant to judicial workload.

Due to the discrepancy between the judicial demand and supply, however, judges are burdened with excessive workload. And this requests a proper response. The purpose of this study is to identify the current state of the judicial workload and assess relevant factors influencing it. To have a more comprehensive view on the subject, this study adopted both qualitative and quantitative research methods such as in-depth interview and statistical analysis of survey results. Empirical richness is a prerequisite to facilitate a productive discussion. The findings are two-fold. Excessive overtime work adversely affects judges, bring detrimental impact on physical and mental competence, and reducing job satisfaction. Whereas, intrinsic motivations such as solidarity and job satisfaction appear to function as mediation and moderating variables, alleviating negative effects of excessive workload on mental and physical competence. Interpreting these results, the court needs to make an institutional effort to properly manage judicial workload and to strengthen intrinsic job motivation.

There are qualitative and quantitative aspects of workload. Qualitative aspects are hard to be assessed. But when we assess and manage the quantitative aspects, it would be possible to approach the qualitative aspects in an indirect way. This study identify influencing factors and relevant indicators to estimate judicial workload in this light. On a pilot-basis, the trial data of sample courts(Civil Settlement Divisions of the Seoul Central District Court) was analyzed to test available indicators and to examine the possibility of workload estimation model. After analysing the time to process cases and the amount of trial materials to review, it was found that the increase in the amount of trial materials outweighs the increase in the number of days required to process cases. When there is no extraneous variable, this finding could be interpreted that judges have invested more energy to process the cases, and thus prevented the probability of more prolonged processing period.

This study is an introductory research to facilitate further discussion and develop

effective policies. For that objective, although rather in a rough and crude way, various qualitative and quantitative approaches were made to identify and assess the judicial workload. Having in mind that judicial performance is in line with reasonable judicial workload, the authorities should give heed to this subject. The problem of excessive judicial workload awaits better answer.

9

Comparative Legal Research on Methods in Selecting Cases to be Reviewed on the Merits in the Final Appeal (2022)

Young Jae KANG
Judge Researcher

Under the Korean legal system, the Supreme Court of Korea is not given the authority or a process to select cases to be reviewed on the merits and grant leave to appeal. This means that the Supreme Court considers all cases referred to it in the same way regardless of the importance of a case. Such a lack of authority or process has been a limiting factor for the Supreme Court, which has limited human and material resources, to fulfill the influential role assigned to it in shaping national jurisprudence as the highest court that reviews conclusions of law.

In contrast, countries with developed legal systems that have greatly influenced Korea's judicial system mostly have processes for selecting cases to be reviewed on the merits in the final appeal to ensure that the highest court in those countries can properly perform the role of building national jurisprudence. With this difference in mind, this research is intended to examine and document such foreign counties' processes in detail for selecting cases to be reviewed on the merits in final appeal. It is expected that this research could serve as an important reference for the discourse on reforms to the final appeal system in Korea and also provide several implications for improvements.

Specifically, this research conducts comparative legal research between different methods for selecting cases to be reviewed on the merits in final appeal in the United States, United Kingdom, Germany, Japan, France, Canada, Norway, Denmark, Australia, and Switzerland. Firstly, the U.S. Supreme Court is considered to be enforcing the strongest case selecting authority through its certiorari system. The U.K. Supreme Court grants leave to appeal in fewer than 100 cases per year and, has a specialized chamber exclusively responsible for determining whether to grant leave to appeal in order to use its limited capacity as efficiently as possible. In Germany and Japan, a final appeal is only admissible when leave to appeal is granted; in their systems, there are, however, gray areas where it is unclear whether decisions to permit the final appeal and decisions on the merits were clearly differentiated in terms of their form and content. In addition, the highest court of Canada, Norway, Denmark, and Australia all have leave to final appeal systems. Lastly, although France and Switzerland do not have leave to final appeal systems, they have systems in which cases can be treated differently according to their importance. For example, the Court of Cassation of France can dismiss a case without specified reasons in certain cases, which is called "rejet non-spécialement" in French. And the Federal Supreme Court of Switzerland distinguishes cases on final appeal according to the amount of a lawsuit, which is called

“wertrevision” in German. Through the comparative legal research, it was difficult to find a country where the highest court of a country is required to examine every case without any system that allows to differentiate cases according to their importance as in Korea.

This research also sheds light on improving the Korea’s system. One of the implication of this study is that it is necessary to adopt a system of limiting the number of final appeals in Korea. This research will contribute to enriching the current discourse in Korea.

10

A Study on the Ways of Improving the Deposit System and Deposit Procedures (2022)

Mijeong PARK
Research Officer

Deposit system has much influence on the legal relations closely related with everyday life of the public, and plays an important role in the course of litigation and execution proceedings. Deposit coverage is so extensive that even court officials in charge of deposit affairs would face difficulty while performing relevant business if they do not have comprehensive and accurate knowledge as to court business in general. And deposit affairs in itself bears a great deal of accountability and potential risk to be incurred by direct payment of deposited money.

Despite the above mentioned significance, the negative preconception of the deposit affair just dealing as a procedural and practical matter has prevented scholars from having much interest in such an area. As a consequence in-depth study on the subject of deposit system and procedure has yet to be carried out to date so that we can hardly find affordable research materials with regard to all encompassing deposit affairs.

Based on such awareness of problems, this research report summarily reviews the theories concerning the deposit in general such as the deposit system and deposit affair, and further examines the systems and procedures of deposit by other countries in a comparative manner, and also scrutinizes procedures for reporting the ground for deposit, and finally seeks to find out some implications and apply them to solve problems of our deposit system, etc. Above all, on these issues, the focus is placed on grasping problems and presenting the ways of improvement not from an academic or theoretical viewpoint but from a practical perspective of court officials.

To begin with, this research proposed the measures for the decreasing the problematic devolvement of the National Treasury in terms of managing the deposited funds, while suggesting the increase of paying the deposited funds, expansion of receiving or recovering the deposited funds by right holders, extension of the extinctive prescription of claim for payment of the deposited funds, and prolongation of the devolvement on the National Treasury period for convenience. This research also examined a new deposit system, and dealt with the measures to secure financial resources for judicial service improvement through setting-off between the deposit cost and the interest accruing on the deposited funds.

In order to enhance convenience of the parties to deposit and efficiency in carrying out the job at deposit office, the followings are expounded concerning deposit procedures: expansion of deposit placed in remote locations, stipulation of processing time of deposit

cases, abolishment of compulsory presentation of the deposit notice document for receiving the deposited money, new provisions under the Deposit Act on the jurisdiction of security deposit/execution deposit, and reorganization or restructure of court's directives having guidelines concerning deposit. Ahead of enforcing the newly inserted Special Cases concerning Criminal Deposit (Article 5-2 of the Deposit Act), this research tried to look into several contentious issues, and suggested some comments on matters to be considered from short/long-term perspective and desirable improvement direction.

Last but not least, this research has sought to systemize the procedures for reporting the ground for deposit as they act as a bridge between deposit offices and courts in charge of execution. To put it concretely, emphasis has been placed on changing the term "reporting the ground for deposit" and "consignment of payment", changing completion period of demand for distribution, and the necessity to have the same jurisdiction for deposit offices and courts in charge of execution, and additionally new proposals has been suggested on the subject to report the ground for deposit so that it could be of help to deposit practice.

Unceasing efforts are required for institutional development. Especially in the area of deposit in which court officials play a significant role, development can be spearheaded only by self-helping efforts by courts, thus the public's trust in courts will be enhanced when these efforts bear fruit as efficient business processes and improved judicial services.

The court's sustainable initiative to develop the institution by combining the practical work-based research and the will to put it into practice is what the people really hopes for and sincerely expects of the court. This research report hopes to be a part of such a stream of endeavor.

11

Research on the Improvement of the Qualification of Document Examiners (2022)

Joo-Seok KIM
Senior Judge Researcher

Both domestically and globally, document examination has played an important role by revealing the author of the related document in various cases. Despite the importance of document examination, controversy over the qualification of document examiners continues to date. Given the feature of the document examination expertise, which presupposes legal disputes and does not have national or official qualification system, it can be said that the management of the qualification of document examiners is virtually left to the court.

Document examination is an examination on specific facts, and the examiner selection/management process is governed by the Supreme Court Judicial Directives on the Examination (hereinafter referred to as "Examination Directives") likewise other areas of expert examination. A person who wants to become a document examiner candidate applies for registration on the list of examiners every year in accordance with the Examination Directives, and is subject to registration on the list of examiners after undergoing qualification screenings by the National Court Administration and the courts or their branches of various levels. However, the procedure for selecting and managing document examiners as stipulated in the Examination Directives is carried out in a stereotyped manner and is focused only on ex-post evaluation, so it is hard to admit that substantial qualification management is being performed properly. For example, in the course of qualification screening for applicants, the review has customarily been done over the documents such as career or training certificates, and evaluations by judges in individual cases are left not actually conducted. Furthermore, criminal record check on the applicants for examiners is regarded as futile because the relevant agency unfailingly denies the inquiry on the ground that it has no legal basis.

In order to improve the qualification management of document examiners, efforts should be made to get suggestions by comparatively scrutinizing foreign examples.

In Anglo-American Law countries, a document examiner becomes an expert witness of specific party and testifies in court according to the adversarial system. In England, as the Rule Against Comparison of Hands was abandoned, document examiners have appeared as expert witnesses in a full-fledged way. While their professional qualifications are leniently recognized by the courts, the Chartered Society of Forensic Science is managing their qualifications by operating an accreditation system for forensic practitioners, which aims to endow the qualification of expert witness in courtrooms. In the United States, some courts and scholars have raised questions about the methodologies of document examination. But

currently, the qualification of a document examiner is the main issue in determining the admissibility or competency of his or her testimony in the individual case on the premise that practical expertise in document examination is generally admitted. On the other hand, standardization of the methodologies and training/education was attempted in order to increase the reliability of document examination, and with the support of public entities, authoritative certification bodies were created regarding the qualification of document examiners.

In Civil Law countries, document examiner is perceived as a neutral assistant to a judge. Document examiners in France are managed within the large framework of the judicial examiner system. Several entities are involved in qualification screening for the registration on the list of examiners, including the chief prosecutor, the general meeting of judges, and the review committee composed of judges, prosecutors, and examiners. Examiner disciplinary system is a characteristic feature. Document examiners in Germany are publicly appointed and managed by Chambers of Commerce. Some German state courts have established and operated examiners quality management circles and have provided useful feedback to examiners by way of using judge questionnaires. In Austria, pursuant to the Examiner Act, an individual statute, the court officially appoints an examiner after a review by the qualification committee. In principle, document examiners must be registered on the list of examiners in order to perform an examination, and the list is made public online. Although Japan is a Civil Law country, the courts do not conduct qualification screening in every area of examination, except for the fields of medicine and architecture, where committees composed of both expert and lawyer members are involved in the selection and management of each examiner. The courts usually select examiners on the recommendation of the parties in other areas of examination, including document examination. In general, the courts strictly decide on the credibility of the document examination, and do not differentiate in the weight of the evidence between the court examination and the party's private examination.

The qualification of a document examiner should be determined to ensure both the integrity or ethics and the expertise. Specific improvement measures to secure these objectives are presented as follows.

First of all, substantial qualification screening of document examiners shall be implemented. To this end, the document examiner selection and management committee should be established, and the document examiner qualification test ought to be entrusted to the National Forensic Service so that it could be properly carried out. Moreover, the factors of the evaluation standard table would have to be changed, and facilities and equipments standard needs to be reorganized as well. Judges' evaluations of examiners in specific cases and the list adjustment system should also be activated.

Next, considering the circumstances under which the courts across the country use the same list, and also the necessity to centralize the diversified affairs, the Minister of the National Court Administration, instead of chief judges in each level of courts and their

branches, should be in charge of the training/education instruction for document examiners. Financial support and practical guidance for the training/education needs to be provided, and subsequent results of the training/education shall be reflected on the re-registration of the current examiners. Furthermore, to improve disqualification check, it is also proposed to provide the legal grounds for criminal record inquiry of examiner candidates.

Last but not least, it is additionally suggested that (i) the norms having binding force with regard to the selection and management of the list of examiners be restructured by elevating from the level of the Supreme Court Judicial Directives to the level of the Supreme Court Rules or the Statutes, (ii) the meaning of 'training' as in the qualification requirement be clearly defined as indicating an apprenticeship, (iii) the list of examiners be made public, (iv) the registration period be extended, and (v) the fees be raised realistically.

12

Court Operations in the Era of a Pandemic: Responses and Challenges (2022)

Eunbin LEE
Judge Researcher

Coronavirus disease ("COVID-19"), which was first identified in late 2019, has spread across the world and affected many key aspects of life, including politics, the economy, social policy, and culture. To prevent the spread of the virus, which is mainly transmitted by respiratory droplets of infected people, citizens are required to wear face masks in all public areas, to maintain social distance, and to avoid confined and crowded places. The contagious nature of COVID-19 has impeded physical courtroom access for all parties, forcing the justice system to find alternatives for hearing cases. This research is intended to examine problems of trial proceedings faced by the justice system in Korea during the COVID-19 pandemic, and to offer suggestions for maintaining judicial functions if the COVID-19 pandemic is further prolonged or if a future pandemic disrupts the world again.

The right of access to courts is a fundamental right guaranteed by the Constitution of Korea to all citizens. Thus, trials are a part of basic procedural rights, and the courts are required to take measures to ensure that a trial can be held in any situation. In 2020, when COVID-19 became prevalent, Korean courts took measures to prevent large numbers of people from gathering in closed courtrooms. One such measure was to manage, or change, trial dates more flexibly in accordance with the government's phased social distancing measures. This led to trial delays, a decrease in the total number of trials conducted, and an increase in the backlog of long-term undecided cases. In addition, citizen participation in trials has significantly decreased.

With this background in mind, this research conducts comparative research on measures taken by courts in the United States, Germany, and Japan to respond to COVID-19, which may shed light on measures that could be taken by Korean courts. Some important findings have already emerged. Countries including the United States, Germany, Japan, and others have transitioned from a physical to virtual courtroom by adopting video trials. The United States has actively used video trials in various litigation procedures even before COVID-19 emerged. Germany and Japan have actively been using video trials after the COVID-19 emerged. In the United States, jury trials are also conducted by video trials. In-depth, academic discussions concerning video trials have been conducted in the United States and Germany; some useful implications can be drawn from those discussions. In addition, the United States and Japan established a so-called Continuity of Court Operations Plan (COOP) before the COVID-19 outbreak to prepare for a pandemic situation, and they have implemented these plans in response to COVID-19. Germany has not only utilized

video trials, but also supplemented physical courtroom facilities to prevent the spread of COVID-19 during in-person trials, such as installing courtroom ventilation systems and providing larger courtrooms.

Taking lessons from measures implemented in other countries, this research offers suggestions for Korean courts in preparation for a prolonged pandemic situation. First, a Continuity of Court Operation Plan (COOP), which includes the newly adopted video trial systems and work-from-home policies, should be established to maintain judicial functions in preparation for a long-term pandemic. It is also necessary to establish a safe physical work environment from infectious diseases. For example, windows should be installed in the courtroom to facilitate ventilation. In addition, a voice recognition system that automatically converts speech into text should be introduced in a courtroom to ease the difficulties of communication due to face masks and sneeze guards installed to keep the virus from spreading. Since work-from-home may be necessary to protect the safety of court officials and judges in a situation in which an infectious disease is prevalent, material and institutional support for working from home efficiently is required. It is also required for the Korean judiciary to acknowledge that video trials can be suitable alternatives to in-person trials in a pandemic situation. With the amendments of Civil Procedure Act and the Criminal Procedure Act, video trials have been introduced into the civil and criminal proceedings in Korea; the requirements and scope of implementation of video trials are still limited. This research therefore suggests that the Korean Judiciary is required to support video trials, including supporting the development of ways to conduct virtual trials online by which judges and parties can fully engage in the judicial process. Furthermore, this research proposes to amend the law to ease the requirements for opening video trials and to expand the range of trials that can be held virtually so that citizen participation trials, which are criminal trials, can also be held virtually. Lastly, institutional support is needed to facilitate access to justice for digitally marginalized groups.

The Judiciary is required to ensure the safety of all people involved in the judicial process and to help prevent the spread and transmission of infectious diseases while continuing fair and speedy trials. This research, which examines challenges faced by Korean courts during the COVID-19 pandemic, offers suggestions and hopefully paves the way in continuing judicial functions even in times of a new pandemic.

13

A Study on Judicial Reform in Singapore (2022)

Junghwan KIM
Professional Researcher

Singapore's judiciary is internationally well-known for its integrity, impartiality, and efficiency in its trials. Singaporeans' trust in the Singapore judiciary is also high, which is well reflected in the public perception survey conducted by the State Courts of Singapore in 2020.

However, the Singapore judiciary has not always received such positive views. Until the late 1980s, the Singapore judiciary not only had issues such as backlogs, inefficient judicial administration, and limited access to courts, but also the citizens' trust in the judiciary was not very high.

Various measures were implemented to solve these issues, but with little success. After analyzing the problems of several measures previously implemented in the 1990s, the Singapore judiciary re-implemented judicial reform measures based on a new approach. It is evaluated that many positive effects of the judicial reform measures implemented at this time have changed the institutional nature of the Singapore judiciary and laid the foundation for the Singapore judiciary to now be highly regarded.

This research report takes Singapore's judicial reform as the main subject of analysis and aims to explore in general Singapore's judicial reform carried out in the 1990s, when the Singapore judiciary began to address problems that persisted through the 1980s and transform itself into an efficient and highly regarded judiciary, and then examine what implications Singapore's judicial reform can give us. Specifically, this report begins with an overview of the Singapore judiciary, then describes the problematic circumstances that led to judicial reform; analyzes the measures taken by the Singapore judiciary prior to judicial reform in the 1990s; analyzes the characteristics and core strategies of judicial reform carried out during the 1990s, the goals and means of the judicial reform, and its effects. In addition, this report analyzes the characteristics of Singapore's judicial reform and concludes with a discussion on what implications those judicial reforms might suggest for us.

14

Judicial Statistics : Evaluations and Suggestions for Their Improvements (2023)

Duol KIM
Visiting Researcher

Collecting and analyzing appropriate statistics is necessary for the courts to understand their current situations and further improve them by dealing with the problems at issue. For such analysis, it is especially important to analyze raw data concerning individual cases, not the aggregate statistics on the courts' activities as a whole.

Like many other countries having modern judicial systems, the Korean courts have also collected various statistics either from the information gathered in the process of case filing and adjudication, or from the decisions rendered by the judges. Those statistics are disclosed to the public (including the relevant researchers) mainly in the form of the 'Yearbook of Judicature', which contains comprehensive statistics of courts' case-dealings. Compared with the counterparts in other countries, the level of statistics included here are hardly said to fall behind, in terms of quantity and quality as well.

However, statistics in the form of printed documents or PDF files, as the Yearbooks of Judicature have conventionally been published, cause considerable difficulty to the researchers in using them. This obstacle can be removed substantially by establishing a website (normally called the 'statistics data portal') dedicated to the presentation of various statistics according to the individual needs and selection, which the Korean courts are also planning to embrace it in its 'next-generation electronic litigation system' currently under implementation for the full introduction in the near future. But the Korean court statistics contained in the Yearbook of Judicature (hereinafter 'the Yearbook Statistics') have other problems, in terms of contents as well as of format. For example, the first part of the Yearbook Statistics, namely the 'Overview' section, basically consists of nationwide statistics, nevertheless concurrently mingling with description and evaluation based on such statistics, which leads the purpose of this section ambiguous. Also, incoherent descriptions and tables between each of the three parts of the Yearbook Statistics, i.e. the 'Overview', 'Time Series' and 'Individual Tables', can be frequently found. In addition, the Yearbook Statistics on the whole contains some inadequate information, and lack of basic consistency is to be found even on the level of individual tables and charts.

A fundamental solution to such problems is to offer statistics via website, not in the form of printed documents as the Yearbook Statistics. However, publishing just the existing tables and charts in the Yearbook Statistics in the form of web document is not enough. It is necessary to design the website with the help of experts in statistics in such a manner, in which a user can freely choose detailed statistics or time series over several years, according

to his or her needs. And the remaining Yearbook of Judicature, excluding the Yearbook Statistics, can be used for comprehensive diagnosis of the court performances.

The more essential problem, however, of the court statistics goes beyond the technical shortcomings of Yearbook Statistics; it lies in such a fact that the Korean courts are extremely reluctant to offer raw data on individual cases. Analysis of the aggregate statistics selectively chosen by the courts themselves is not sufficient to diagnose the problems encompassing the courts and find out causes thereof. In order to encourage researches based on judicial statistics and also establish a positive feedback in which more useful statistics can be gathered by those researches, it is essential to expand related researchers groups, while providing them with more raw data for that purpose. Even considering the personal data protection and other limitations under the existing legal system, it is necessary for the courts to develop various levels and methods of offering raw data according to the nature of data and purpose of its use, such as sample extraction or establishing special places for browsing classified data.

Furthermore, together with the improvements of the judicial statistics, the courts can also contribute to the research of policy on the long term basis by collecting, organizing and presenting past data and statistics that are yet to be digitalized in the form of historical statistics.

Lastly, in order for the courts to embark on the various measures of improving judicial statistics mentioned above, it needs to recognize the importance of the analysis and application. To this end, it is desirable for the JPRI, the institution endowed relatively with a freedom of research within the courts, to invite experts to engage in researches on statistical analysis. If researchers in the JPRI, in cooperation with the court data center in charge of collection and maintenance of judicial statistics, would be able to accumulate and spread their meaningful studies inside and outside the courts, it could also offer a significant momentum for the courts to recognize the importance of statistics.

15

A Study on Japanese Summary Court (2023)

Hyunwoong SEO
Research Officer

For a long time, there has been a significant concern about judicial policies and systems to manage the plethora of cases inundating the courts more effectively with limited resources. This study endeavored to find out the implications for a judicial policy through an in-depth analysis of Japan's summary court system, particularly focusing on its efficiency in adjudicating first instance cases, which constitute the bulk of court filings, and its strategies for engaging with the public in an amicable and accessible manner.

Japan is a country with a similar legal system and socio-cultural background to Korea's. But there is a critical difference in the judicial system: jurisdiction of first instance cases is bifurcated between the Summary Court and the District Court. Japan's Summary Court, an established facet of the summary court system since World War II, expediently and proficiently adjudicates straightforward and minor first instance civil and criminal cases. Notably, the Summary Court has jurisdiction in the first instance over civil litigation that claims less than 1.4 million yen, encompassing approximately 70% of all initial instance cases. It adjudicates all the summary offenses in criminal cases and is accountable for issuing about 80% of warrants. Since the Summary Court covers extensive first instance cases, the District Court, another tribunal dealing with initial instance matters, could concentrate on relatively more significant and complex lawsuits. Also, superior courts, including the High Court and the Supreme Court, could reduce the judicial burden, facilitating swifter legal proceedings.

By structuring an institutional framework to secure summary court judges, who are pivotal in constituting the backbone of these courts, Japan could have operated 438 Summary Courts across the nation(in comparison, there are 253 District Courts) to manage a substantial volume of first instance cases. Most adjudicators presiding over Summary Courts are not conventional career judges; instead, they are individuals who have previously served as court officers (court secretaries). They are appointed through a rigorous process and are deployed as judicial resources, specializing in resolving simple and minor first instance cases. Through this approach, Japan has adeptly actualized the principle of 'selective concentration of judicial capacity.' In short, simple and minor matters, which accounts for a significant portion of all lawsuits, are adjudicated by Summary Court judges; many were court secretaries once, while fewer of the intricate and pivotal cases are dealt with by career judges in the District Court and higher courts extensively.

This strategy of allocating and concentrating judicial resources suggests that Korea

should consider introducing a distinct judicial entity (judge) dedicated to simple and minor cases, constituting approximately 70% of initial trials. The 'judicial resources for these simple and minor cases' encompass various professionals such as retired judges, general court personnel, and attorneys. Diversifying the composition of the judiciary and securing the judicial resources specifically for simple and minor cases could facilitate the strategy of selective concentration of judicial capacity overall. At the same time, it would guarantee the one's right to trial more effectively.

Moreover, beyond its role as a tribunal with circumscribed jurisdiction over initial instances, the Summary Court implements an array of systems and special rules of procedures, such as the judicial commissioner system, the summary judgment system, and the small claims system, coupled with the significant reduction or elimination of various documents. These features make the Summary Court close and friendly to the public. Korean courts ought to accept the efficacious systems of summary courts and contemplate ways to provide convenient and easily accessible judicial services to the general public regardless of their legal knowledge, as well as to those who are socially and economically marginalized. Furthermore, Japan experienced societal challenges before us, such as population decline and rural depopulation due to low birth rates and population aging. It is imperative that we formulate long-term judicial strategies to figure out anticipated societal changes, drawing insights from Japan's experiences with the consolidation and closure of summary courts.

16

Maintaining Order in the Court: Current Status and Recommendations for Improvement (2023)

Mun Sik JEON
Research Officer

Order must be maintained in the courtroom to ensure fair proceedings. Despite current systems and practices to maintain order in the courtroom, court disruptions continue to occur. As times have changed with social democratization and technology development under the 4th Industrial Revolution, the appearance of disruptive behavior in the courtroom has also changed. Accordingly, this research report analyzes the current status and problems of the system and seeks to improve it in order to help Korean courts maintain order in the courtroom.

While it may be desirable to examine measures to improve keeping order in the courtroom along with measures to enhance public trust in the judiciary, this research report focuses on solving problems that need to be improved quickly to maintain order in the courtroom.

For this purpose, incident and accident reports prepared by the security management units of courts nationwide were collected and analyzed. Moreover, major cases of crimes in court were extracted and analyzed using computer systems such as the court's internal computer network judgment search system, and interviews were conducted with those involved in the trial to understand the current state of practice as much as possible.

Following issues were identified as problematic after analyzing the current state of practice: Smartphones equipped with high-performance recording capabilities significantly increasing the likelihood of audio and video recording without the permission of the presiding judge, lack of places where disorderly persons can be held for trials that order detention, lack of systems dealing with disorderly persons in remote video trials, difficulties in immediately initiating criminal proceedings even when a disturbance in a courtroom constitutes a criminal offense and the court is aware of the fact, the need to reorganize the duties of court security officers, such as court security officers, who are law enforcement officers, negative public opinions about "all rise" practice in the courtroom, lack of support from police officers when police dispatch is requested to maintain order in the courtroom, etc.

As a result of researching the systems and practices of foreign countries such as Germany, France, and Japan in the continental legal system, and the United States, Canada, and the United Kingdom in the Anglo-American legal system, the positions of each country were identified regarding the regulation of electronic device use in court, including

general guidelines on electronic device use in Canada, which can be used as a reference for improving our system. Also, foreign legal systems were examined to improve our detention system and criminal procedures for disorderly conduct in courts, and to reorganize the duties of human resources such as court officers.

Through a comparative legal review of the current state of practice and problems related to maintaining order in the courtroom, this research report proposes measures to regulate the use of electronic devices in the courtroom, improve the detention system, introduce summary criminal procedures for criminal offences committed in the courtroom, establish and publicize the meaning of "all rise" practice in the courtroom, and introduce a court police system.

17

Improvement Measures on Judgment Writing Methods of the 1st Instance Court following the Unification of Legal Profession (2023)

Seung Yeon CHUNG
Judge Researcher

It's been more than 10 years since the unification system of legal profession was fully adopted in South Korea. In the past, as the legal axiom says, "Judges only speak through judgments.", judges remained silent during hearings and thereafter devoted themselves to writing self-sufficient and complete judgments. However, in the era of unification of the legal profession, there is a strong demand for judges to focus on oral hearings and to communicate directly with the parties. It does not mean for sure that dedication on the hearings justifies a quick once-over writing of the judgment. When the results of the judge's communication with the parties during the trial and the judge's responses to the parties' requests are sufficiently embodied in the judgment, will the parties who received the judgment feel that they have fully communicated with the court. In this respect, in the era of unification of the legal profession, the responsive function of judgments is more strongly required than ever.

As those who have at least 5 years of experience in other legal professions are newly appointed as judges, the aging of the entire judiciary is accelerating. Under the increasing physical burden, how can we kill two birds with one stone: enhancing the oral hearing on one hand and strengthening the responsive function of the judgment on the other hand? Basically, the purpose of this study is to find ways to simplify the methods of judgment writing, thereby reducing the effort that judges put into writing the judgment itself and allowing them to focus more on the hearing. However, it does not solely pursue simplification, but rather focuses on the structure and composition of the judgments, with a view to suggesting improvement measures that more effectively highlight the issues on which the parties seek answers.

In order to identify what the parties want from the judgment, this research interviewed civil dedicated judges appointed from among those with more than 20 years of legal experience, criminal judges with prosecutorial experience, and lawyers who worked at the court more than 15 years reaching the level of presiding judges. In-depth interviews were conducted. Various opinions have been presented, but what they all say in common is that it is more important not to omit issues than to write about them in detail, and that it is more effective to organize issues through direct communication with the parties at the hearing.

In a bid to improve the structure and composition of judgments, this research also studied the judgment writing methods of common law countries(the United Kingdom and the United States) and those of the continental law countries(Germany, France and Japan)

which have great influence of Korean legal system. A checklist-style judgment that only states the conclusion and key reasons and a judgment writing method that boldly omits the statement of reasons when there is no substantive dispute between the parties, could be introduced in Korea as well. Overall, a summarized judgment is not only less burdensome to write but also is easier for the parties to understand than a lengthy sentences judgment. Additionally, a head-to-head structure that puts the conclusion at the forefront is clearer to the parties involved. In civil judgments, it is desirable to actively use and quote documents, tables and pictures submitted by the parties. In criminal judgments, it is also desirable to supplement the sentencing guidelines system and to use and quote the jury's verdict in the citizen participation trials. In this research, pioneering judgment writings that have already used the above improvement methods were collected as diversely as possible, and presented as reference materials.

18

Strategies for Preventing Delays and Expediting Proceedings in Civil and Criminal Trials (2024)

YoungChang LEE
Senior Judge Researcher

Global metrics indicate that Korea has consistently ranked among the top ten nations worldwide for expeditious legal proceedings since 2015 concerning the speed of trial. Nevertheless, domestic statistics over the past decade reveal that although there has been a marked reduction in the volume of civil and criminal cases filed, there has been an elongation in both the interval from case filing to the first trial date and the average processing time of cases. Furthermore, there has been a sharp increase in the backlog of long-standing unresolved cases, and the distribution index of unresolved cases has worsened. This issue pervades various judicial arenas, including both panels of judges and single-judge chambers, and also across both the first instance and appellate trials, regardless of civil or criminal litigation. Consequently, this situation has elicited vigorous reproach from the National Assembly and media outlets. The lag in judicial proceedings significantly undermines public confidence in the judiciary and its adjudicators, rendering the prompt analysis of underlying factors and the proposition of swift remedial actions both critical and imperative.

The factors contributing to the extension of trial durations are multifaceted, encompassing several external variables: ① The convergence of information and communication technologies with digital innovations across finance, economy, industry, and societal structures since 2010 has catalyzed rapid and intricate transformations. This evolution has led to a consistent upsurge in cases characterized by complex facts or legal entanglements, challenging to resolve through traditional legal principles. ② The legal profession has witnessed a significant expansion, with the number of practitioners soaring from 15,905 in 2013 to 33,162 by March 2023, inversely correlating with a decline in the ratio of cases per lawyer. This surge is paralleled by lawyers uncovering novel case types, adopting competitive and assertive approaches to dispute resolution, and employing diversified litigation tactics, all of which have further compounded the delays. ③ Conversely, the number of judges has seen a marginal increase of 1.13-fold over a decade, from 2,844 judges in 2013 to 3,214 in 2022. ④ The impediments induced by the COVID-19 pandemic have been a universal challenge. Spanning four waves from February 2020 to July 2021, with the cessation of the seven-day quarantine only occurring in June 2023, the pandemic significantly disrupted normal court operations, contributing to procedural delays.

The internal dynamics contributing to trial elongation are as follows: ① There has been a notable escalation in the median age of the judiciary, ascending from 39.8 years in 2013

to 44.2 years in 2022. At the same time, the proportion of judges in their fifties increased from 6.4% in 2010 to 22.9% in 2022. Amidst transformations within the judicial system, these more seasoned judges are increasingly assigned to rigorous tasks within single-judge and equal-judge panel chambers rather than fulfilling roles as presiding judges. ② With the unification of the legal profession, the prior systems for the immediate appointment of judges and their apprenticeship training were supplanted by a recruitment model favoring non-judicial practitioners with relevant experience. This shift has precipitated a decrease in the speed and efficiency of case processing. ③ The erstwhile promotion system for high court presiding judges, once celebrated for its facilitation of rapid case throughput, an augmented caseload capacity, and a reduction in backlog, has been discontinued. ④ The judicature has exhibited a deficient deployment of administrative authority aimed at mitigating trial postponements. ⑤ The regularity of personnel transfers and division of work has led to frequent substitutions of judges and discontinuations of hearings, thereby prolonging case management timelines and diminishing throughput. ⑥ The benchmarks for case volumes and sentencing outcomes were recalibrated to lower thresholds (for example, the 3-3-3-0 sentencing framework), predominantly within the civil first instance collegiate panel, resulting in an overall decrease in case processing. ⑦ In both civil and criminal proceedings, the protocols for conducting intensive hearings and timely submissions were insufficiently observed, resulting in a dilution of attention to trials, which in turn occasioned frequent resumption. ⑧ The judiciary's ineffectiveness in managing continuation, postponement, and later designation of dates has contributed to extended durations of litigation. ⑨ In both a civil trial on the merits and a criminal trial, the absence or malfunctioning of accelerated processes was evident, alongside instances of deliberate trial delays exploited through the manipulation of limitations on the duration of detention in criminal cases.

Strategies to mitigate trial delays and accelerate legal proceedings encompass the following measures: ① Augment the number of judges and law clerks. Although the engagement of law clerks serves as a strategic countermeasure to the senescence of the judges and the growing intricacy of legal disputes, an extension of judicial tenure and an enhancement of the treatment of judges are also required. ② The frequency of personnel transfers and alterations in the division of work should be minimized, necessitating the implementation of a mechanism for appointing judges based on geographical areas or the activation of a regional working system. To adhere as closely as possible to the principle of maintaining a single division of work per court, it is imperative that chief judges practically exercise their directive powers to allocate responsibilities. ③ The specialization of judges in civil and criminal proceedings can significantly expedite legal processes. Judges possessing specialized knowledge should be systematically assigned to dedicated trial divisions over extended periods. ④ There is a pressing need for the explicit articulation of the specific purviews, methodologies, impacts, and constraints of judicial administrative powers, enabling chief judges to aptly wield such authorities to forestall procedural delays. Moreover, the appointment of a chief judge who possesses a robust determination and capability to address these delays is essential. ⑤ Establishing benchmark durations for

case processing serves as a critical goalpost and standard for judges' case management. Nonetheless, an accurate assessment of judges' actual caseload is deemed crucial. This entails the quantification of time spent within and outside the courtroom, broken down by individual cases and procedural steps, through the use of time-tracking methods. The formulation of these standard durations for case processing is instrumental in facilitating swift and apt case management, laying a foundation for the justified augmentation of the number of judges, equitable resource allocation within the judiciary, and furnishing an objective metric for performance assessment and the efficacious application of judicial administrative authority. ⑥ Virtual hearings represent virtually the sole strategy to circumvent the procedural stagnations occasioned by crises akin to the COVID-19 pandemic. Concurrently, they emerge as a formidable solution to eradicate trial bottlenecks, thereby facilitating expedited proceedings. Presently witnessing an accelerated adoption rate, the introduction of refinements and auxiliary functionalities to this modality would significantly amplify the speed, efficiency, and confidence of judicial processes. ⑦ Both the Civil and Criminal Procedure Acts mandate the consolidation of trial proceedings. Once initiated, the swift culmination of these proceedings stands as a pivotal mechanism for achieving expedited legal adjudications and mitigating the implications of an aging judiciary. In civil litigation, the scheduling of a pretrial conference is crucial for ensuring focused deliberation. The practice of conducting these pretrial conferences via virtual hearings from the judge's chambers should be institutionalized within this framework to designate a date of trial and set deadlines for the submission of arguments and applications for evidence, and once the trial has commenced, the judge should conduct a concentrated and comprehensive oral argument and examination of evidence, while proactively rendering the party failing to meet such periods lose their right to do so. Similarly, the Criminal Procedure Act endorses strategies to avert procedural delays, including the effect of loss of rights, particularly for tardy applications for evidence. Precise guidelines for the continuation, postponement, and later designation of dates must be delineated and adhered to. In addressing trial extensions due to expert appraisals, the adoption of virtual sessions for presenting expert testimony, reasonable appraisal fees, the allocation of specialized appraisal personnel, and the creation of dedicated appraisal centers warrant consideration. ⑧ The pretrial discovery system, similar to the discovery process in the United States, effectively streamlines the trial process. The institution of interrogatories, deposition recordings, and mandates for the production of documents and additional materials—including electronic data—when appropriately utilized during the pretrial phase, can greatly improve the focus of the trial process. ⑨ The allocation of cases designated for sentencing ought to be a collective decision within the chamber, eschewing the prescriptive 3-3-3-0 sentencing formula. A reassessment of the feasible caseload is imperative, demanding an accurate measurement of the judges' actual workload. While the strategy of "condensing the essence and articulating judgments succinctly" possesses inherent constraints, adopting an approach of "streamlining judgments through selective citation and omission" is advisable to diminish the time expended in writing judgments. ⑩ The establishment of a refined evaluation system, accompanied by the assignment of corresponding benefits and drawbacks, is imperative. This research assessed

the adverse outcomes potentially arising from the use of a promotion mechanism as an incentive structure and scrutinized the essential factors for developing a new promotional framework. This analysis, predicated on a foundation of fair work evaluation, addressed strategies for prioritizing personnel transfers and division of work, the targeted distribution of performance-based compensation, and the nomination of chief judges as potential benefits. In contrast, this research critically examined the implications of continuous appointments and the intensified vetting process for mid-career judicial appointments as prospective disadvantages. ⑪ Concerning the augmentation of judicial efficiency through artificial intelligence, this research has delineated potential applications within the judiciary's operational framework and conducted a thorough review of how AI can be incrementally integrated into judges' duties over short, medium, and long-term horizons. Immediate development in these identified areas should commence upon the allocation of adequate financial resources.

Additional recommendations for enhancements include: ⓐ Expanding the number of chambers, which could involve transitioning collegiate panels to single-judge formats, ⓑ Recruiting skilled new judges, which is a measure critical for expediting legal proceedings, ⓒ Implementing a compensation mechanism for trial delays, ⓓ Enacting a special act aimed at accelerating trial processes, ⓔ Issuing periodic reports on trial expedience, alongside transparent disclosures of unresolved cases by chamber and offering tailored statistical analysis on trial delays and accelerations for interested judges, ⓕ Promoting collaboration within the legal profession to foster swift trial outcomes, ⓖ Granting the right to file a motion to set for a date of trial, ⓗ Enhancing the mechanism for disbursing litigation expenses by those who delay the trial in the case of civil proceedings, ⓘ Instituting streamlined procedures for small claims to accelerate resolution, ⓙ Developing expedited processes for checks and drafts, ⓚ Implementing time-bound proceedings or uncontested trials upon mutual consent of the parties, ⓛ Establishing an internet-based court or online court as an online dispute resolution institution, ⓜ Affording undetained defendants the right to file a motion for set a trial date, ⓝ Lengthening the permissible detention duration under exceptional circumstances for detained defendants, ⓞ Streamlining the reimbursement of litigation expenses by those who make trial protracted in criminal proceedings, ⓟ Introducing simplified trial protocols for cases where the defendant denies allegations, ⓠ Accelerating the criminal trials for minor offenses, ⓡ Increasing the affirmation of first-instance judgments in criminal appeal cases, ⓢ Actively utilizing the dismissal of appeals through judgments without argument proceedings in criminal appellate trials, ⓣ Facilitating the dismissal of indictments or the reduction of sentences in criminal proceedings.

The human toll wrought by delays in legal proceedings is substantial. It is crucial that, while preserving the appropriate trial threshold, this research impels the judiciary to implement reforms and improvements aimed at eliminating these delays and ensuring accelerated trials. Each judge must recognize the severity of this issue and dedicate themselves fully to the prompt and proper resolution of the cases for which they are responsible.

19

A Study on the Improvement of the Collective Redress Procedures for Investors (2024)

Miyon KWON
Judge Researcher

In recent years, the financial market has witnessed persistent investor losses, attributed to the illicit activities of financial investment entities. The amplification of these losses proportionate to market expansion precipitates instability within the financial ecosystem. Furthermore, with a growing segment of the populace turning to financial instruments for retirement planning and wealth accumulation, the ramifications of substantial losses incurred through financial investments have assumed broader societal significance. Consequently, the establishment of judicious compensation mechanisms has become imperative to uphold the fundamental purpose of financial law: to protect investors.

This report categorizes the redress procedures for collective financial investment damages into three distinct categories: general civil litigation, securities class action lawsuits, and an alternative redress system involving regulatory bodies. A comprehensive analysis of real cases reveals the protracted nature of, and evidentiary challenges inherent in, litigating collective investment lawsuits, both of which serve to impede investors' pursuit of legal recourse. While arbitration offers cost-effective dispute resolution, its efficacy as a collective redress mechanism is hampered by a dearth of institutional support. An evaluation against international benchmarks, including the US, the UK, Germany, and Japan, reveals that, excluding the US, mechanisms for class actions remain comparatively underutilized. Notably, the US and the UK have instituted post hoc compensation systems through regulatory agencies, which underscores the imperative of proactive regulatory engagement in South Korea's collective redress endeavors.

Drawing from empirical and comparative research, this report advocates two principal avenues to enhance collective redress procedures. On a practical level, this report proposes procedural refinements to evidence discovery and methods to augment professional standards, as well as an initiative to address common issues through simultaneous adjudication.

Furthermore, legislative reforms are recommended, including the exclusion of execution suspension for immediate appeals against certification of class action within the Securities Class Action Act, alongside measures for plaintiffs to uncover evidence with greater ease. Over the long term, the report proposes the establishment of a system of restitution action under the Financial Investment Services and Capital Markets Act, which would empower regulatory bodies to recoup illicit gains obtained by financial investment entities and redistribute them to investors.

It is envisaged that the implementation of recommendations outlined in this report will not only ameliorate collective redress procedures, thereby fortifying investor protection — the raison d'être of financial law — but also optimize the allocation of judicial resources.

20

A Study on the Private Participation in Justice (2024)

Young Gug YOU
Professional Researcher

Discussing privatization in the context of justice is never easy. This might be a consequence of pondering the nature of justice or recalling previous experiences of privatization and the societal tensions that followed. This response, however, is fairly normal and indicates that the discussion and attempts to privatize the judiciary should be approached cautiously.

For ease of discussion, this study resolves the reluctance to use phrases like "privatization of justice," "private participation in justice," "privatization of justice," and "privatization" by using the term "privatization of justice." However, in light of previous research and the lack of a precise conceptual definition of "privatization of justice" from a practical standpoint, this study aims to define the term in order to establish the fundamental tenets and guidelines of the current system as well as future private participation in justice.

Thus, in order to give a conceptual understanding of "privatization of justice," this report begins with a theoretical review. Next, it identifies basic inquiries about the concept, explains its purpose, its internal and external implications, and the acceptable extent and limits of privatization. In order to identify possible areas and fundamental principles for future privatization discussions, this study examines the features of the juvenile, family, child protection, civil and criminal, and juvenile sectors from the perspective of judicial privatization and the current systems in these sectors.

As noted, before delving deeply into the topic of "privatization of justice," it is crucial to define the term. Divergent theoretical and practical viewpoints have led to debates over the idea, but it is also a crucial criterion for facilitating the categorization of systems for dispute resolution, prevention, and enforcement at all phases of the process, including pre-trial and post-trial stages.

By making a distinction between internal privatization, which involves the function of the court, and external privatization, which involves the role of non-judicial actors other than the court, this study aims to derive the concept of "privatization of justice." The former can be further subdivided into consultation and broader conceptions depending on whether the court is empowered by delegation or entrustment, whilst the latter is an extension of the conceptual scope of privatization focusing on "non-publicity," particularly "closed to the public." Nevertheless, despite the derivation of these concepts, there are still some unanswered problems in understanding these concepts, which may be attributed

to disagreements over the interpretation of the scope of the concepts of "justice" and "privatization," as well as their relationship. Consequently, this study aims to respond to the following preliminary questions: ① Can justice be understood as a target for privatization? ② Is there a reason for contemplating justice privatization differently than current privatization? ③ What kinds of justice privatization are there, and what factors should be taken into account to make it happen? ④ What are the anticipated effects and ultimate objectives of justice privatization?

The answers to these questions can be employed for identifying the purpose of the judicial privatization system and its strategic implications from both the internal and external perspectives of courts. In short, judicial privatization's ultimate objective reflects a fundamental comprehension of the nature of justice, which can only be accomplished if the specific objectives of judicial privatization are concentrated on the core functions and roles of courts. The protection of the people's right to a fair trial might be viewed as the ultimate objective of judicial privatization. But because this objective could be a little unclear, a more realistic and concrete one is required as a prerequisite for its attainment, which can be described as creating conditions that enable the courts to concentrate on their primary functions and roles. It is acknowledged that such a realistic orientation is in line with the future challenges of securing and maintaining the stability and sustainability of court functions.

In addition, judicial privatization might have strategic implications from both internal and external perspectives. According to the former perspective, judicial privatization has the strategic implication of "efficient allocation of judicial resources," which may be more significant given the courts' ongoing budget and manpower shortage. By taking into account the impact on judicial trust, which is related to the judiciary's very foundation, the latter perspective suggests that the discussion of judicial privatization may have the strategic implication of realizing the possibility of enhancing the public's trust in the judiciary. Judicial privatization, however, can only be considered in conjunction with increasing the number of judges and expanding budgets. It is evident that judicial privatization cannot be a solution to essentially improve the problematic conditions that support the need for increased budgets and personnel, so some caution is necessary when examining the relationship between the two.

Stated differently, it should be made clear that budget and staffing increases are not a replacement for judicial privatization but rather a complement to it. Thus, budget and staffing increases are still necessary despite the debate about judicial privatization. It will be more effective to address the problematic situation caused by limited judicial resources and to build and restore judicial confidence if both are considered "parallel and simultaneously."

Yet, because of its very nature, the discussion over privatization of justice has obvious boundaries, and it is crucial to establish limits on the scope and level of its acceptability. However, there will unavoidably be some differences between areas that are relatively easy to privatize and areas that require a more cautious approach, depending on the nature of the

subject area (civil, criminal, juvenile, family, child protection, etc.). This must be taken into consideration during the discussion.

The following is a summary of the prerequisites and fundamental guidelines for private participation in justice:

- Although the civil sector is thought to be relatively easy to discuss privatization due to its nature, there aren't many noteworthy current systems outside of alternative dispute resolution (ADR) that can be included in the scope of the concept of judicial privatization.
- In the criminal sector, it is evident that there are some limitations to privatization discussions due to their nature, but there are also areas where further privatization discussions are possible based on collaboration with other pertinent ministries and the public's role as an external actor in the trial itself, such as public participation trials.
- Compared to the civil and criminal sectors, the juvenile, family, and child protection sectors have a strong guardianship aspect and a significant and significant need for management and supervision, counseling, and protection in the post-trial stage. As a result, there is much space for debate on the expansion of non-court actors' roles and responsibilities. Due to the nature of the field, it is challenging to radically alter the fundamental course of the court-led system's operations; therefore, it is necessary to take into account the scope and level of privatization in phases, as well as the potential for budgetary support and the requirements for policy promotion by pertinent ministries.
- To ascertain where the privatization discussion should be prioritized and how to set up the internal and external conditions for the gradual expansion of privatization, a comprehensive analysis based on the investigation and identification of common and individual issues in each field is required.
- It should also be made abundantly clear that the need for more funding and staffing is a necessary supplement to, rather than a substitution for, the privatization of the judiciary. As a result, even in the face of the privatization debate, the need for more funding and staffing is still crucial, and their "parallel and simultaneous consideration" will be more effective in addressing the problematic situation brought on by a lack of judicial resources as well as in building and restoring confidence in the judiciary.

By defining the purpose, function, and, in certain cases, operation of representative systems that have been operating in the civil, criminal, juvenile, family, and child protection domains, this study also seeks to analyze the institutional implications and particular facets of the privatization of justice within the framework of the privatization debate.

The study adopts a two-step classification approach to organize the types of current systems that fall under the umbrella of judicial privatization. In order to determine which areas of civil, criminal, juvenile, family, and child protection are more likely to be subject to judicial privatization and which stage of the process has a greater potential for functional

delegation, the first step focuses on procedures, examining and categorizing systems in place throughout the pre-trial and post-trial process in terms of internal and external privatization concepts. In the second step, based on the aforementioned framework of objectives of judicial privatization, this study identifies the objectives of the systems laid out in the first step and distinguishes them by identifying the specific goals of the systems looked at. This study reviews the primary systems that are now in place in each subject from the standpoint of judicial privatization, based on this categorization and suggests a system (draft) that can be discussed and promoted for future privatization.

XIX The Judiciary

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1

Research on the Categorization and Social Impact of the United States Supreme Court Decisions (2016)

Jewoo LEE
Professional Researcher

As the highest federal court in the nation the United States Supreme Court enjoys considerable influence in determining the direction and extent of socioeconomic and political development in America. A key to the Court's authority and influence lies in the granting of petitions for certiorari in a limited, yet flexible manner. Through this the justices of the Court are able to focus their time and resources on cases of paramount importance to the nation as a whole. An overview of American history reveals how decisions made by the Court resolved conflict among various interest groups in the American society and how as a result the federal judiciary gained the confidence of the American people.

In order to understand the ramifications and effect of the decisions of the Court on society in America this research proposes to examine the history and characteristics of the institution of the Court. Also the writ of certiorari is studied in detail, with particular emphasis on the determining factors that play a crucial role in granting (or denying) certiorari. Afterwards the Court's decisions are categorized into different groups with some of the most influential and authoritative cases from each group being analyzed extensively. Through this the present research examines how individual decisions of the Court have influenced (and continue to affect) the legislative and administrative branches both on the state and federal levels, as well as the general public and society. In particular, special attention is given to the question of 'countermajoritarian difficulty', so as to provide insight into the nature of the relationship between the Court and Congress.

2

Research on the Federal Judicial Center of the United States (2022)

Hyun Jung SONG
Professional Researcher

Judicial administration, such as staff appointment and dismissal and work division within the court, is required for the court to run its organization, personnel, budget, accounting, and facility management. Education and research functions are also important parts of judicial administration because they provide judges with a wide range of information while they are dealing with heavy trial workloads. These functions assist judges in conducting proceedings in a more faithful and efficient manner.

The Federal Judicial Center, an independent institution primarily responsible for education and research functions related to federal court administration, was established in the United States in 1967 so that the federal judiciary could respond quickly to changes in social conditions and ensure a continuous and efficient justice system for the people. The Center's main divisions are Education, Research, Federal Judicial History, and International Judicial Relations. Each division advances the development and implementation of better judicial administration in federal courts. The Education division, for example, develops and implements education programs for court personnel, including judges, and the Research division conducts research projects to improve the efficiency of federal courts. Because of the staff's professionalism and independence in carrying out their mandate, its work is highly regarded by federal judges as well as other branches or agencies, including Congress.

Given the scope of the Center's work, it could be considered a hybrid institution that combines Korea's Judicial Research and Training Institute, Judicial Policy Research Institute, Training Institute for Court Officials, and Supreme Court Library (compilation of judicial history materials). Indeed, the Center is a significant institution, having served as the primary reference for the establishment of the Judicial Policy Research Institute, an independent research institute under the Supreme Court of Korea, as well as having a close relationship with the Judicial Research and Training Institute, a Korean judiciary educational institution.

This study examines in depth the Center's background and establishment process, purpose and function, organizational composition, specific tasks of each division, and method of performance, with the goal of deriving implications that help Korean institutions that perform educational and research functions improve the efficiency and quality of work performance, develop various educational programs or research projects, or utilize internal and external resources. Furthermore, because the Center is an institution with integrated educational and research functions, this study suggests ways to strengthen mutual

cooperation between educational institutions, such as the Judicial Research and Training Institute and the Judicial Policy Research Institute, which is in charge of research functions within the Korean judiciary, by examining the organic cooperative relationship between the education division and the research division of the Center.

Hopefully, this study would help to continue improving and activate the education and research functions of the Korean judiciary.

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1

Guidelines for Legal Citation (2015; expanded edition 2017)

Jeeyoung BYUN
Professional Researcher

This research aims at developing a reasonable and practical legal citation typically suited for the legal research environment of Korea.

Thus the first thing discussed in this writing is the basic principles of legal citation, including the necessity of such.

With a view to provide an optimal legal citation model for Korea, the research then studies the current state of legal citations. Various existing citations in Korea are reviewed and summarized for this purpose. The notable difference between the legal citation and the citation in the area of social studies is quickly examined here as well.

Also, legal citations of foreign countries are analysed in order to cultivate a better ground for designing legal citation for Korea.

All of the above now leads this article to propose a desirable scheme under which the legal citation should be developed. Reviewed by many experts in the field, the research finally presents an exemplary legal citation package available for everyone to use with ease.

2

Research on the Systems of Personal, Resident and Citizen Registration in North Korea (2017)

Jewoo LEE
Professional Researcher

The present research examines the systems of personal registration, resident registration and citizen registration in North Korea. The lack of interest in and understanding of these registration systems is not surprising, given the scarcity and limited availability of relevant materials and documentation on the subject. Despite the uncertainty over when and how reunification will take place on the Korean peninsula, it is essential that we prepare for such a historic event and its pursuant integration of the above registration systems. For such purposes this research focuses on the following.

First, the personal, resident and citizen registration systems of North Korea will be studied in detail, with particular emphasis on their roots. Much attention will be given to the questions of how the systems were adopted and developed in the early years of the North Korean regime, and what impact the systems of the former Soviet Union and China had on their formation.

Second, a comprehensive report of the personal, resident and citizen registration systems of North Korea will be provided based on a review and analysis of all publicly available materials, as well as such materials that until now have been either difficult to access or closed to the public. In addition, the research relies on first-hand accounts of the systems by North Korean defectors. By means of carefully structured interviews it was possible to identify the latest developments of the systems, thereby making it possible to update relevant information on the subject.

Third, an important part of the research concerns addressing the challenges of integrating the systems of the two Koreas upon reunification. Different policies on setting up a single system of family registration and resident registration in post-reunification Korea are thoroughly considered. An analysis of such policies in respect of their lawfulness and constitutionality will also be presented.

3

A Study on the Federal Assembly System of Switzerland (2019):

Focusing on the Legislative Process

Yong-hoon CHOI
Dispatched researcher

Switzerland measures only 41% of the area of South Korea, but it is a federal state consisting of 26 cantons and uses four official languages. Although Switzerland is linguistically, geographically, and religiously divided, it is one of the wealthiest countries in the world. One of the factors behind the country's development is its political stability, largely owing to a Federal Assembly that is based on compromise and collegiality.

The Federal Assembly consists of the Council of States, which represents the cantons, and the National Council, which represents the overall population. The system is bicameral and the two chambers have equal rights. The bicameral Federal Assembly prevents a winner-take-all political structure through the harmonization of democratic and federalist principles. The militia parliament, in which members of the Federal Assembly carry out parliamentary activities alongside normal professional work, is a distinctive feature that sets Switzerland apart from other countries. Also applicable to the armed forces, the militia principle is a unique Swiss tradition and history that provides the structural framework for a low-cost, high-efficiency society.

The Federal Assembly is elected directly by citizens and, having democratic legitimacy, it is the highest authority and elects the seven members of the Federal Council. However, decisions made by the Federal Assembly do not take precedence over the will of the people. Any voter who disagrees with the Federal Assembly's legislative process may exercise his or her right to veto against a decision made by the Federal Assembly by calling a referendum. Direct democracy gave citizens final decision-making power on legislative bills. It enabled citizens to freely express their political opinions and made the multi-dimensionally segmented nation come together.

The Federal Council actively participates in the legislative process of the Federal Assembly. When the Federal Council submits to the Federal Assembly a legislation plan containing the policy aims and objectives to be pursued, the Federal Assembly works together with the Federal Council to determine political agendas on key policies. As it drafts the bill, the Federal Council, which has the right of initiative, gathers a range of opinions by consulting subject matter experts. There is also a legislative consultation procedure in which interested groups, cantons, etc., give relevant opinions by participating in the drafting process of the Federal Council or Federal Assembly. Legislative evaluations are carried out ex ante and ex post to prevent excessive regulation of bills, improve political accountability and legislative quality. When the Federal Council submits a bill to the Federal

Assembly, it also submits a dispatch that contains the Council's official position and a detailed explanation. The dispatch describes the legislative intent of the Federal Council, evaluation, effects, and other detailed information to facilitate future interpretation and application of the law. As shown here, the Federal Assembly and Federal Council form a mutually collaborative, virtuous cycle for legislation through legislative plans, legislative consultations, expert participation, legislative evaluations, and dispatches.

The Federal Assembly elects about 200 federal judges through a procedure where parties put forward nominations, the Federal Assembly's Judicial Committee verifies the candidates and makes suggestions, and the United Federal Assembly comes together to vote. When electing federal judges, the Federal Assembly considers not only political party affiliations but also suitability for public service and professionalism, languages spoken, sex, geographical factors, etc. Tenure, prohibition of concurrent offices, immunity, etc., are prescribed to ensure that trials are not affected by the partisanship of federal judges. The Federal Assembly may supervise the judicial administration of the Federal Court but cannot participate in trials, which guarantees the independence of the Federal Court and federal judges.

4

A Study on the Legislative Process in the UK (2020)

- Focusing on Coordinating Procedures For Conflicting Interests Regarding Bills

Jimin LEE
Judge Researcher

There are three different types of bills introduced in Parliament in the UK, according to their characteristics and application scopes. These can be classified to be as public, private and hybrid bills. Private bills have features differentiating from the other bills in that the bills confer particular powers or benefits on any specific individuals, institutions or organisations, being submitted by persons or organisations outside Parliament other than government or parliamentarians. The registered parliamentary agents shall be employed to be capable of introducing the bills as well as performing in the course of formulating and processing in the Parliament.

Any individuals or institutions to be specially and directly affected by a private bill have the right to petition against it and appear before a committee and testify should they have the admissible standing for the petition. The Opposed Bill Committee plays biggest role to hear the opinions of the interested parties and further to coordinate the conflicting interests, showing differences from the ordinary legislative process since it is to be proceeded similarly to the trial procedure in the civil court.

Hybrid bills have characteristics of both public bills and private bills, so that even such bills are to be additionally applied the hearing procedure of private bills if and when the coordination and compromise of the interested parties would seem to be required.

Recognising officially the systemic procedure for coordinating the interests of the parties concerned in the course of deliberating the bills is remarkable characteristic of the legislative process of the UK in typically contrast to Korea without having an equivalent system. The U.K.'s legislative process having such a procedure to be heard and judged in a manner similar to the trial procedure would favorably give us some suggestions for developing the advanced legislation since in recent years Korea has the increasing number of special acts relating to interests of particular regions and organisations, etc.

We might well attempt to introduce the system in the National Assembly of ROK for giving the interested parties the rights to be heard in order to be able to deliver their opinions more directly and clearly in the legislative process, provided that the submitted bills are to be of the dispositive nature to have specific impacts on the interested parties to be delineated more unambiguously and restrictively in terms of the extent thereof.

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