

THE CHARACTERISTICS OF THE KOREAN PROSECUTION SYSTEM AND THE PROSECUTOR'S DIRECT INVESTIGATION

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I. PROLOGUE

Since the dawn of history, every civilized country has developed its own investigation system, exercised investigatory power, cracked down on criminals and indicated them. In other words, every country has been imposing upon criminals appropriate sanctions commensurate with their crime.

Every civilized country has invested its legal system derived from its national consensus. Under the system, each country has organized investigative and judicial authorities and enacted criminal procedure laws which govern the investigation process. Through such a system, each country has maintained national order and secured the human and welfare rights of its citizens.

Today, crime is being committed in more sophisticated methods and in a more organized form. In addition, new types of crime are continuously occurring. To effectively deal with such situations, investigative organizations are also getting systematized and scientific in terms of organization and investigation methods. Especially in the Republic of Korea, prosecutors play a main role in the investigation and judicial process. Prosecutors initiate investigation or direct the police regarding a specific crime. Prosecutors are the only authority in deciding whether to indict a specific suspect, participate in trial and execute judgements made by judges.

In connection with the topic of this training course, I would like to focus my presentation on special characteristics of

the Korean prosecution system, the prosecutor's control of the police, and the prosecutor's discretionary power in deciding whether to indict a specific person, thereby explaining how investigation is conducted in Korea and human rights are protected.

Finally, I will try to help you understand the direct investigation activities and authorities of prosecutors by briefly explaining the corruption case of Roh Tae Woo, the former Korean president, and the illegal loans in the Hanbo Conglomerate case which caught the attention of the world.

II. CHARACTERISTICS OF THE KOREAN PROSECUTION SYSTEM

A. Two Faces of the Prosecutors' Organization

The authority of prosecutors is basically similar to the executive power because the ultimate purpose of the prosecutors' organization is the imposition of appropriate punishment upon criminals. On the other hand, it also has a judicial character since indictment and participation in the trial process has much to do with judgments. Therefore, these two are the most representative features of the Korea prosecution system.

Under the Korean laws, each prosecutor has independent authority free from any pressure in exercising his/her power, for example, in the investigation of crime, participation in the trial process and the execution of judgments. In this respect, prosecutors have the same independence in performing their works as judges have. On the other hand, to enable prosecutors to effectively achieve their purpose (which

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is to maintain national order and peace), prosecutors form a pyramid organization, at the top of which is the Prosecutor-General. In this respect, the Korean prosecution system has an executive character.

The Prosecutors' Office is under the Ministry of Justice which is one of the executive departments.

B. Leader of Criminal Investigation

The most remarkable characteristic of the Korean prosecution system is that prosecutors play a leading role in the criminal investigation. Prosecutors not only conduct direct investigation, but also give instructions to the police in connection with a criminal investigation. Prosecutors are legally entitled to control and supervise the police regarding criminal investigations. Accordingly, police obey prosecutors' instructions as far as criminal investigations are concerned. Thus, prosecutors are the supreme and ultimate authority in criminal investigation, and the police serve as assistants to the prosecutors. Our system differs from that of the United States of America in that American prosecutors have no authority to investigate crimes. It also differs from the Japanese prosecution system in that prosecutors and police in Japan are in a cooperative relationship, whereas Korean prosecutors and police are in an order-obeyance relationship. In this respect, the Korean prosecution system is similar to that of France or Germany.

C. Discretionary Power of Indictment

Another feature of the Korean prosecution system is that prosecutors have the discretionary power to decide whether or not to prosecute a suspect. Prosecutors can decide not to prosecute a suspect even if there is sufficient evidence for prosecution.

To my knowledge, prosecutors in most countries should, in principle, prosecute a suspect if there is enough evidence to prosecute that person, and only under exceptional circumstance can prosecutors decide not to prosecute such person. However, under Korean law, prosecutors have the general and broad authority not to prosecute a suspect. This discretionary power, if exercised well and fairly, helps prosecutors take into account criminal policy factors regarding a specific suspect at the pre-indictment stage. On the other hand, it is also possible that prosecutors might abuse such power. Thus, I believe that such power should be exercised carefully and appropriately. In addition, there should be certain kinds of control systems in order to prevent abuse of that power.

III. AUTHORITY OF KOREAN PUBLIC PROSECUTORS

A. Criminal Investigation

Korean prosecutors have the authority and duty to investigate all crimes.

Investigation authority is an inevitable premise of indictment and the starting point in imposing punishment upon criminals. Under Korean law, the authority to investigate crimes is vested in the prosecutors. Consequently, prosecutors, as the leaders or main players of criminal investigation, control and direct the police who are the assistants to the prosecutors.

B. Indictment and Maintenance of Indictment

As the only prosecuting authority, Korean prosecutors have the power to decide whether or not to prosecute a suspect.

In the case that a prosecutor chooses to indict a person, the prosecutor has the duty to participate in the trial and maintain indictment until a final court judgement

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has been rendered. In an exceptional case, the prosecutor can remand the indictment.

Under the Korean Criminal Procedure Law, indictment by a private person is not allowed and only the government can indict a suspect. Of the many departments of our government, the prosecutors' office monopolizes the authority of prosecution.

In addition, as I have already mentioned, prosecutors have the discretionary power to suspend prosecution even if there is sufficient evidence to maintain prosecution. Prosecutors suspend prosecution when they think the benefit of non-prosecution is greater than the cost of prosecution. It enables prosecutors to take into account criminal policy factors when deciding whether to prosecute a suspect.

C. The Right to Direct and Supervise Judicial Police Officers

Korean prosecutors have the legal right to direct and supervise judicial police officers as far as criminal investigations are concerned. Under Korean law, prosecutors are the czars of criminal investigations. Consequently, judicial police officers are obliged to obey the prosecutors' orders which are issued based on the prosecutors' legal authority.

Generally speaking, judicial police officers serve as members of the executive. However, they are all under the control of the prosecutors when they perform judicial police work in connection with criminal investigations. This system is based on the belief that due process and individual rights will be best protected by enabling prosecutors to play a leading role in criminal investigation since they are legal experts and are guaranteed independence and a high status. It is also the best way to effectively indict a suspect and to maintain such an indictment.

D. The Right to Direct and Supervise the Execution of Judgments

In Korea, prosecutors direct and supervise the execution of all criminal judgments, e.g., direction and supervision of the execution of arrest warrants, search or seizure warrants and final criminal judgments. This was designed based upon the belief that the appropriateness of warrant execution and the protection of individual rights in connection with such execution could best be secured by entrusting those duties to the prosecutors who represent the public interest.

E. Authority and Duties as Representatives of the Public Interest

Korean prosecutors, as representatives of the public interest, directly participate or direct public officials to participate in civil suits in which the government is a party or in which the government has an interest. In these civil proceedings, the Korean Minister of Justice represents our government. Even though an executive department or its subsidiaries becomes a defendant in an administrative suit, the prosecutors direct public officials of the department or participates in the trial because the prosecutors are legal experts and representatives of the public interest.

IV. STATUS OF PROSECUTORS

A. Nature of Prosecutor's Office

1. Independent Office

The public prosecutor's office is under the Ministry of Justice, which is a department of the executive. In this respect, the nature of the public prosecutor's office is different from that of judges, who belong to the judiciary. The prosecutor's office is, however, an independent organization which makes its own decisions. In other words, the prosecutor's office is not an assistant to the

Prosecutor-General or the chief prosecutor of the district public prosecutor's office.

2. Status as Quasi-Judges

The duties which prosecutors exercise are basically executive ones. However, these duties should be exercised with the same fairness and strictness as required in exercising judicial power. In other words, the duties of prosecutors, consisting of criminal investigation, indictment, maintenance of indictments, and the execution of judgments, etc., has much to do with judicial responsibilities, and therefore need to be exercised very carefully to achieve justice. Accordingly, prosecutors not only have the status of executive officers but also that of quasi-judges.

B. Protection of Status of Public Prosecutors

To ensure the fair execution of the prosecutors' duties and prevent pressure from other persons, prosecutors are given the same protection as judges. Specifically, our laws provide that the term of the office of the Prosecutor-General is two years and that the prosecutor shall not be subjected to dismissal, suspension from office or reduction of salary, except by impeachment, judgment of imprisonments and disciplinary action. The number of prosecutors, the salary and disciplinary proceedings are also stipulated by law. The purpose of specifying such matters by law is to protect securely the status of prosecutors, and thereby enable prosecutors to perform their duties free from any unjust interference.

C. Independent Status of Public Prosecutors

Under Korean law, the aforesaid duties of prosecutors are vested in each individual prosecutor as an independent office. Therefore, it is not true that all the prosecutorial authority belongs to the chief

prosecutor. The Prosecutors' Office is composed of many individual prosecutors and it coordinates the prosecutors' work. However, it does not itself exercise prosecutorial authority. Although the chief prosecutor of a specific prosecutors' office directs and supervises each prosecutor attached to it, the exerciser of prosecutorial authority is each individual prosecutor. Consequently, it is for the individual prosecutor to decide policy and exercise the prosecutorial authority.

D. Appointment, Rank and Assignment of Public Prosecutors

In Korea, the qualifications to become public prosecutor are identical to that of a judge and an attorney. Anyone who wants to be appointed as a public prosecutor must pass the Judicial Examination held by the Administrative Department and then complete the two-year training course at the Judicial Research and Training Institute, which is supervised by the Supreme Court.

The number of examinees who successfully passed the Examination in 1995 was 300. It was 500 in 1996 and will be 600 in 1997. As you can guess, the Korean government is increasing the number each year. Comprehensively taking into account the budget and work load, we draw up a plan regarding the number of prosecutors to be newly appointed each year. In fact, we appoint around eighty to ninety new prosecutors each year and assign them to each district public prosecutors' office. The total number of public prosecutors in Korea was 1,072 as of September 1, 1997.

The appointment and assignment of all prosecutors are made by the President upon the recommendation of the Ministry of Justice.

There are four ranks of public prosecutors: Prosecutor-General, Senior Chief Public Prosecutor, Chief Public Prosecutor, and Public Prosecutor.

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Requirements for appointment and assignment to each rank are different.

E. Principle of Identity of Public Prosecutors

The Principle of Identity of Public Prosecutors means that all prosecutors, each of whom is an independent office, form a uniform and hierarchical organization, at the top of which is the Prosecutor-General. This principle was designed to have all prosecutors perform their work as one body and cooperate with each other. Accordingly, even if a specific prosecutor's work is done by another prosecutor, it does not make a difference in terms of legal effect.

F. Right of the Ministry of Justice to Direct and Supervise Public Prosecutors

Public prosecutors are executive officials belonging to the Ministry of Justice. Although the activities of the public prosecutors are judicial, the Minister of Justice, as the supreme supervisor of prosecutors, directs and supervises prosecutors in regard to the general prosecutorial work. However, the Minister can only direct and supervise the Prosecutor General with respect to specific cases. A specific case means one dealt with by a specific prosecutor. With respect to a specific case, only the Prosecutor-General can direct and supervise a prosecutor in terms of investigation, indictment, maintenance of indictment and execution of final judgments.

Since prosecutors are executive officers belonging to the Ministry of Justice and the Minister is the one who bears the political responsibility, prosecutors are generally under the supervision of the Minister. On the other hand, prosecutors should be free from any unjust pressure from political parties and other executive departments. This is the reason why we place restrictions

on the Minister's right to direct or supervise prosecutors.

V. ORGANIZATION OF KOREAN PUBLIC PROSECUTOR'S OFFICE

A. Kind and Name of Public Prosecutors' Office

The public prosecutor's office consists of the Supreme Public Prosecutor's Office, five High Public Prosecutor's Offices, twelve District Public Prosecutor's Offices and forty branches as of January 1997.

The Supreme Public Prosecutor's Office is in Seoul, and it corresponds to the Supreme Court. The High Public Prosecutor's Offices are in five major cities, corresponding to the High Courts. The District Public Prosecutor's Offices are in forty cities and counties, and correspond to the District Courts or Family Courts (Figure 1).

B. Structure of the Prosecutor's Office

In each prosecutor's office, there is one chief prosecutor who generally controls the work of that office. Right below the chief prosecutor is the deputy chief prosecutor who assists the chief prosecutor or executes some of the chief prosecutor's work vicariously. Below the deputy chief prosecutor are several directors who are the chiefs of several divisions. All work of the office is divided into several parts and assigned to each division depending upon the character or nature of the work. Several prosecutors are assigned to every division.

In addition, there is support staff in each of the prosecutor's office, who assist prosecutors in investigation, in drawing up or keeping documents, trial, etc. The staff belong to each of the above divisions and the general affairs bureau. They sometimes even investigate cases based on the prosecutor's order or draw up documents.

VI. DIRECT INVESTIGATION BY PROSECUTORS

A. Necessity of Direct Investigation

When a crime is committed, the police officers that belong to the National Police Agency usually conduct the criminal investigation. However, public prosecutors themselves conduct criminal investigations in the case of special offenses such as corruption by public officials, tax evasion, offenses related to huge economic incidents, and intellectually and legally complicated offenses. To increase the efficiency of criminal investigation for such cases, the Supreme Public Prosecutor's Office established the Central Investigation Department and the District Public Prosecutor's Office established the Special Investigation Department.

B. Supreme Public Prosecutor's Office and Central Investigation Department

1. Organization

The Supreme Public Prosecutor's Office (hereinafter called SPPO) consists of the General Affairs Department, the Central Investigation Department (hereinafter called CID), the Criminal Department, the Violent Crime Department, the Public Security Department, the Inspection Department, the Criminal Trial and Civil Litigation Department, and the Administration Bureau. The Chief Public Prosecutor is in charge of each department, except the Administration Bureau, of which is headed by an administrative official.

The Director of the CID, the Chief Public Prosecutor, has under his control five senior public prosecutors who are the Director of the Investigation Planning Office, the Criminal Intelligence Management Officer, and the heads of Divisions I, II and III. The Director of the Investigation Planning Office is a veteran senior public prosecutor and has the same rank as the Deputy Chief Public Prosecutor in the District Public

Prosecutor's Office. Senior public prosecutors are usually in charge of the Criminal Intelligence Management Office or Divisions I, II, and III. As of September 1, 1997, seventy officers were working in the CID.

2. Duties

The main duty of Divisions I, II, and III is to investigate special criminal cases, whereas the Criminal Intelligence Management Office collects and manages criminal information. In relation to the administrative service, the Investigation Planning Office makes plans of investigative operations, controls and supervises them, and cooperates with other institutions dealing with criminal investigation. Divisions I, II and III are under the control of the Investigation Planning Office. The CID mainly investigates corruption by high-ranking government officers such as ministers of the government, members of the National Assembly, presidents of banks, and other high-ranking officers in the central government. This Department also investigates criminal cases connected to huge economic incidents—e.g., tax evasion by a conglomerate.

C. Special Investigation Department in the District Public Prosecutor's Office

1. Organization

Special Investigation Departments have been established in eight District Public Prosecutor's Offices and consist of a senior public prosecutor, three or four public prosecutors and special agents. As an exception, there are three senior public prosecutors, eighteen public prosecutors, and 100 special agents in the Seoul District Public Prosecutor's Office. The special agents are public prosecutor's office personnel, but they are not police personnel.

2. Duties

These departments investigate special criminal cases including corruption by public officials and tax evasion. These departments also collect data and information related to special crimes.

D. Investigation Procedure

In criminal cases, the police and thirty-four special investigative agencies initiate the basic investigation. However, the Criminal Procedure Code vests the power of initiation and the conclusion of criminal investigation solely in the public prosecutors. Therefore, the police and special investigative agencies serve only as assistants to the public prosecutors and should conduct their investigations in accordance with the general standard and/or special directions issued by the public prosecutors and transfer all cases mandatorily to the public prosecutors for the conclusion of investigations.

Public prosecutors themselves directly investigate criminal cases related to nationally recognized high-profile incidents or intelligence cases.

1. Criminal Information Collection

One of the most important operations in criminal investigation is the collection and management of criminal information. As the society rapidly changes, criminal methods and types become manifold, organized and sophisticatedly intelligent. Under such circumstances, the necessity of a systematic management and collection of criminal information was raised by the public prosecutor's offices. Accordingly, the CID in the SPPO established the Criminal Intelligence Management Division on March 1, 1995. Since then, twelve District Public Prosecutor's Offices and forty branches established a Division. Division officials collect criminal information through diverse sources—especially through minute books of national and local

assemblies, articles of journals and newspapers, and rumors in the stock markets.

2. Enforcement Group

In the Special Investigation Department of the Seoul District Public Prosecutor's Office, there are six enforcement groups consisting of two to three public prosecutors and about 10 special agents. They investigate criminal cases on the basis of their speciality. The head of each enforcement group is managed by a public prosecutor of varied experiences. Each group has its own specialized field such as the financial and economic field, the construction and scientific technology field, and the corruption field. However, the enforcement groups are not restricted to their corresponding specialized field. Each group can investigate other fields, if necessary.

Other District Public Prosecutor's Offices are planning to establish such an enforcement group.

3. Money Laundering and Its Trace

The most important factor in the investigation of corruption by public officials is tracing the source of the bribe that public officials received. Because the bribery of public officials takes several stages and because it is clandestine and intelligent, it becomes more and more difficult to trace the source.

In regards to money laundering, the Financial Action Task Force on Money Laundering (FATF) was established at the G7 Summit in 1987 to provide policies coping with money laundering. Twenty-six countries of the OECD are affiliated with the FATF. Korea is now considering joining it.

Korea does not have a "Money Laundering Control Act", which criminalizes money laundering itself. However, Korea enacted "The Special Act

against Illicit Drug Trafficking”, which contains punishment provisions for money laundering related to drug crimes. Consequently, only money laundering related to drug crimes is criminalized and can be punished in Korea. Even though it is necessary to criminalize money laundering itself, it is difficult to do so because of the protection of confidentiality in financial transactions.

To trace illegal fund, the SPPO organized an investigation team consisting solely of officers of the Office. If necessary, the Office can request the dispatch of officers from the Bank Inspection Board and the National Tax Administration. The SPPO published the book, “The Reality of Financial Transaction and Its Trace,” which speaks about money laundering and the investigations surrounding it.

4. Places of Investigation

In the past, public prosecutors used hotels or secret places to maintain confidentiality in the investigation of corruption by high-ranking government officials and tax evasion by a conglomerate. In principle, public prosecutors investigate such cases only inside the building of the public prosecutor’s offices now. The SPPO and the Seoul District Office have special investigation rooms which only prosecutors in charge are admitted. Even other fellow prosecutors are restricted from entering.

F. Prosecutor’s Investigation and the Mass Media

Because the effect of the prosecutor’s investigation on the society is enormous, reporters always pay attention to prosecutors who are in charge of important cases in order to obtain important sources of information. Reporters also try to catch people who come to the Office in relation to the investigation and thereby attempt to cover all stories about the investigation. However, the Office does not provide them

with any information about the people involved in order to protect their rights and the secrecy of the investigation before the trial. According to Korean Criminal Law, prosecutors, police officers and other personnel connected to the investigation can be punished when they release information before the trial. Sometimes, reporters discover the investigation information through the copy of arrest or search warrants obtained in court. This is because they have easy access to the warrant in court.

From the viewpoint of the mass media, the people have a right to know and thus the mass media, emphasizing freedom of the press, try to report the facts. The problem is that media agencies compete with each other to report unproven or unconfirmed information and rumors. Such reports themselves may interrupt the investigation and violate civil rights. Thus, prosecutors ask for the correction of news based on unproven information by the responsible media agency and prohibit the reporters from entering the Public Prosecutor’s Office. Sometimes, the press club itself prohibits the reporters responsible for the news from gaining access to the press club room of the Office.

VII. THE CORRUPTION CASE OF FORMER PRESIDENT ROH TAE WOO

Since October 1995, the CID investigated the charges of bribery and graft cases of former President Roh Tae Woo, along with the then Defense Minister, presidents of banks, and the other high-ranking government officials. I introduce now the bribery and graft cases of former President Roh.

A. Background of Investigation

After the Real Name Financial Transaction Regulation came into effect in

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August 12, 1993,¹ there was a rumor of a huge slush fund circulating in the stock markets and the private loan markets. In August 1995, the Government Management Minister Seo Seok-jai at that time reportedly told reporters under the condition of being "off the record" that close aides of one of the two former presidents had approached the ruling camp and asked whether the fund, amounting to 400 billion won (US\$500 million dollars), could be converted to the former president's bank accounts using fake and borrowed names. This rumor was reported by the press.

Along with the increase in the national interest and suspicion of the slush fund, Congressman Park Kay-dong of the opposition Democratic Party announced at the National Assembly's plenary session in October 19, 1995 that the former President Roh had several bank accounts using borrowed names. Congressman Park presented bank account balances as evidence of the slush fund. Bank clerks confirmed the evidence on the same day. Accordingly, the prosecutorial authorities began to investigate the case, with a strong will, that although it was a historical bribery and graft case of a former president which had never happened in Korea before, prosecutorial authorities would convict him and, if found guilty, impose a severe sentence on the purpose of the improvement of justice in Korea, and in turn resolve the suspicion that people have about public officials.

B. Investigation Process

Holding the search warrant for Roh's bank accounts that Congressman Park revealed, the CID traced the slush fund and summoned the then Chief of Presidential Security Service. The CID confirmed that

Roh had several bank accounts of the slush fund. The amount of total transactions in Roh's accounts was approximately 74 billion won (US\$100 million) and the balance was 36.5 billion won (US\$45 million dollars). These accounts had been managed by a presidential resident financial officer. It was revealed in the process of the investigation that the presidential financial officer followed the order of the Chief of the Presidential Security Service and opened several bank accounts using borrowed names in several banks. After this investigation, Roh announced in his apology speech that for five years during his presidency, he received about 500 billion won (about US\$630 million) from business owners and that the remainder of the accounts was 170 billion won (US\$212 million).

Roh was summoned on November 1, 1995 and became the first former president in Korean history to be arrested and detained in prison on November 16th for the violation of the special act on additional punishment for bribery. The next day, the former Chief of the Presidential Security Service was arrested and detained too.

Along with the arrest, more than sixty people related to the case of false name bank accounts, most of whom were high-ranking government officers and bankers, were summoned and investigated. In relation to the bribery, about 200 businessmen, including thirty-nine of the nation's major business owners, were brought in for interrogation. In relation to obtaining illegal real estate, about forty people including Roh's relatives by marriage and his close aides were investigated. In relation to the investigation of money laundering and the illegal purchase of real estate, 500 bank accounts were traced and investigated.

For the investigation of this huge slush fund case, the prosecutorial authority mobilize ninety-two officers, including the Investigation Planning Officer, public

¹ Under the presidential decree on the mandatory use of real names in all financial transactions, no fund can be opened using either a false or borrowed name.

prosecutors of Divisions II and III in the CID, public prosecutors of the Seoul District Prosecutor's Office, officers from the Office of National Tax Administration, and officers from the Bank Supervision Office.

C. Indictment

Indictments were determined by the situation in which big business owners gave bribes in return for government favors, the size of the bribes, the criminal histories of the big business owners, and the effect of the indictment on the domestic and international economy. On December 5, 1995, the investigation was terminated with the indictment of Roh and his aides with confinement, twelve fund raisers and business owners without confinement, and three bankers with a summary order. In the meantime, the request of the Securance Order for Collection of Equivalent Value on all of Roh's properties was accepted by the court, based on the Special Case Act of Confiscation for Crime of Public Officials. All of Roh's property was preliminarily seized before the indictment.

D. Result of Trial

In the Seoul District Court, the court of original jurisdiction, Roh was sentenced to twenty-two years and six months in prison and was fined 283.8 billion won (about US\$354.2 million) on August 26, 1996. According to the Special Act for Speedy Litigation, the sentence of the first trial should be passed within six months from the date of indictment, and that of the trial of appeal and the last trial should be passed within four months from the date of receiving the trial record.

In the High Court, the court of appellate jurisdiction, he was sentenced to seventeen years in prison and fined 262.89 billion won (US\$328.6 million). The Supreme Court

rendered a judgment dismissing Roh's appeal on April 17, 1997. Business owners who gave bribes to Roh were sentenced to imprisonment and suspension of execution of sentence in the appellate court.

VIII. CRIMINAL INVESTIGATION ORGANIZATIONS OF KOREA

A. Organizations

Criminal investigation organizations of Korea are divided into two categories. One is prosecutors and the other is judicial police officers. Judicial police officers are again divided into two groups, one of which is general judicial police officers and the other is special judicial police officers.

1. Prosecutors

Prosecutors are an investigation organization as well as an indictment organization. The legal status of a prosecutor as an indictment and that of a prosecutor as an investigation organization are different from each other.

In Korea, prosecutors play a leading role in criminal investigation and therefore they are the czars of investigation in reality as well as in name.

2. Judicial Police Officers

As I have already mentioned, judicial police officers are composed of general ones and special ones. Whereas the former can investigate any kind of crime, the latter's authority to investigate is limited in terms of subject matter or territory. In other words, special judicial police officers are basically members of the executive whose original work has little to do with criminal investigation. In order to take advantage of their expertise on a specific field, they are entitled to investigate specific crimes.

B. Relationship between Investigation Organizations

1. Relationship between Prosecutors

In principle, a prosecutor is obliged to investigate crimes over which he/she has territorial jurisdiction. However, a prosecutor can investigate outside of his/her territorial jurisdiction by requesting another prosecutor who has territorial jurisdiction over a specific crime. Sometimes, prosecutors go directly to a place outside of his/her territorial jurisdiction and investigate crimes in cooperation with the prosecutors assigned to that area.

2. Relationship between Prosecutors and Judicial Police Officers

Under the Korean Criminal Procedure Law, the relationship between the prosecutor and the judicial police officer is not one of cooperation, but one of order-obeyance.

Accordingly, the prosecutor directs and supervises the judicial police officers in connection with criminal investigation and the police should obey the prosecutor's official order.

These duties of the prosecutor are essential in realizing the spirit of the rule of law which requires the protection of human rights and due process in the investigation of crimes.

Judicial police officers should obey any official order issued by the prosecutors. (Article 53 of the Korean Public Prosecutors' Office Act.) Moreover, the judicial police officers, as assistants of the prosecutors, can investigate crimes only under the control of prosecutors.

In case a judicial police officer does not comply with a prosecutor's order or commits any unjust act in connection with performing his duty, that prosecutor can, through his chief prosecutor, request the officer to stop the investigation or request

his superior officer to replace him. If necessary, prosecutors can request the police or other executive departments to dispatch some of their officers to the prosecutor's office. In order to ensure that prosecutors effectively control judicial police officers, Korean laws provide the following:

a) Prosecutors' authority to inspect the place of arrest or detention

To deter unlawful arrest or detention, the chief prosecutor of the district public prosecutors' office or its branch offices dispatches prosecutors once a month to the place of the investigation organizations where a suspect is being arrested or detained. The inspecting prosecutor examines relevant documents and questions the arrestee or detainee. If there is reasonable ground to believe that any suspect has been arrested or detained in violation of due process, the prosecutor should release the suspect or order the judicial police officer to refer the case to the prosecutors' office. (Article 198-2 of the Korean Criminal Law.) The purpose of this system is to protect individual rights from unlawful infringement. This provision emphasizes the prosecutor's role as an advocate of human rights.

b) Right to request to the judge to issue an arrest warrant

Under Korean law, the judicial police officer is not entitled to directly request to the judge to issue an arrest warrant. A judicial police officer should apply for an arrest warrant with the prosecutor. If such an application is made by a judicial police officer, the prosecutor examines the application documents and decides whether to request to the judge to issue the arrest warrant. The same is true of a warrant for search, seizure or inspection.

c) Right to approve urgent arrest made by a judicial police officer

Prosecutors or judicial police officers may arrest a suspect without an arrest warrant in cases where there is reasonable ground to believe that (1) the suspect has committed a crime punishable by death, life imprisonment or imprisonment for more than three years; (2) the suspect may destroy evidence or has escaped or may escape; and (3) it is practically impossible to obtain an arrest warrant from a district court judge because of urgency. Of course, prosecutors or judicial police officers should state the above reasons of urgency to the suspect before arresting him/her. When a judicial police officer urgently arrests a suspect, he should obtain the approval of a prosecutor immediately after the arrest. In reality, when a judicial police officer has made an urgent arrest, he immediately transmits the application documents of approval of arrest to the prosecutor by facsimile. Through this system, prosecutors can prevent judicial police officers from illegally arresting a person, thereby protecting human rights. This provision also serves as a tool which secures prosecutors' right to control judicial police officers.

d) Right to direct judicial police officers in connection with disposition of seized articles

When judicial police officers (1) sell the seized article and keep the proceeds in custody; (2) return the seized article to its owner; or (3) temporarily return it to its owner, they must obtain prior approval of the prosecutor.

e) Judicial police officer's duty to report to the prosecutor

When crimes happen which are related to national security or are socially important such as insurrection, foreign aggression, crimes related to explosives,

murder, etc., judicial police officers should immediately report to the chief prosecutor of the district having jurisdiction over the investigation. Moreover, judicial police officers are also obliged to report to the prosecutor on the occurrence of riots and important affairs or movements of political parties or social groups. Based on such reports, prosecutors take appropriate measures and direct judicial police officers.

3. Relationship between Judicial Police Officers

a) Relationship between judicial police officers and judicial police staff

Judicial police officers investigate crimes under the control of the prosecutors, and the judicial police staff investigates crimes under the direction of the prosecutors and judicial police officers. In other words, judicial police officers may investigate in their own name and authority, whereas judicial police staff only assists in the investigation of the prosecutors or the judicial police officers. In practice, however, judicial police staff draws up various kinds of investigation documents as proxies for judicial police officers.

b) Relationship between judicial police officers

Judicial police officers who are the same in rank should perform their duty in cooperation with each other.

IX. INDICTMENT

In Korea, prosecutors have the sole authority to decide whether to prosecute a suspect, except in cases of the quasi-indictment process by the court and petty crime indictment made by the police. This is called the principle of Indictment Monopolization.

A. Presentation of Indictment

To prosecute a suspect, the prosecutor should present an indictment to the court. Prosecution can not be made verbally or by way of wire.

In practice, the prosecutor draws up the indictment and submits it to the court. In case of prosecution with detention, arrest warrant (or urgent arrest document, arrest document against a flagrant offender), the detention warrant and a certificate of detention are attached to the indictment.

B. Principle of Presentation of Indictment Only

In the indictment, neither documents nor things which can mislead the judge can be attached. Accordingly, prosecutors do not present documents or things such as complaints, inspection documents or expert's opinion at the time of prosecution.

X. DISCRETIONARY POWER OF PROSECUTORS (PRINCIPLE OF CONVENIENT PROSECUTION)

A. Introduction

Under Korean law, prosecutors have the discretionary power to suspend prosecution even if there is sufficient evidence to convict a suspect. This is called the Principle of Discretionary Prosecution. It is a concept contrary to the Principle of Compulsory Prosecution. Namely the Principle of Compulsory Prosecution means that the prosecutor should prosecute a suspect when there is sufficient evidence to convict that person in the prosecutor's opinion and the other requirements for prosecution are satisfied.

The purpose of the Principle of Discretionary Prosecution is to enable the prosecutor to take into consideration criminal policy in deciding whether to prosecute a specific suspect. However, some lawyers are critical of this principle in that: (1) such principle can not effectively control prosecutors' arbitrary decision, and

(2) it is possible that the exercise of the prosecution authority might be influenced by political pressure.

B. Discretionary Power and Its Criteria

Section 1 of Article 51 of the Korean Criminal Procedure Law provides that the prosecutor may decide to suspend prosecution considering the factors enumerated in Article 51 of the Korean Criminal Law. The prosecutor may decide not to prosecute a suspect taking into account the suspect's age, character, pattern of behavior, intelligence, circumstance, relationship to the victim, motive and method for committing the crime, results and circumstances after the crime. However, the factors enumerated in Article 51 of the Criminal Law are not words of limitation, and therefore prosecutors may exercise their discretionary power considering factors other than those enumerated in the article.

C. Reasons for Suspension of Prosecution

Although it is up to the prosecutor to decide whether to suspend a prosecution, it is very difficult to definitely state the reasons for non-prosecution because the prosecutor must think about various factors relevant to a specific case in making the decision. For example, the prosecutor should consider whether non-prosecution would help the criminal's rehabilitation and not confuse social order. Although such criminal policy considerations have been materialized through a long period of practice, I can not deny the fact that the test for non-prosecution differs slightly from one prosecutor to another prosecutor. It is due to the different views of life of individual prosecutors. The test might also vary with the times or change in people's way of thinking. Accordingly, I can not definitely state the reasons for non-prosecution. However, Article 51 of the

Korean Criminal Law enumerates the following factors:

1. Factors Regarding the Suspect

a) Age

According to the age of the suspect, prosecution's disposition of the case might differ. Generally speaking, prosecutors deal leniently with juveniles, students and the aged.

b) Character and pattern of behavior

The character, pattern of behavior, hereditary diseases, habit, career, prior convictions, etc., of the suspect are usually considered in making a suspension-of-prosecution decision.

c) Intelligence

Intelligence refers to the suspect's sensibility. Sensibility is measured by the suspect's academic career or extent of knowledge.

d) Circumstances or environment

The suspect's circumstances such as family background, vocation, work place, living standard, relationship with classmates and parental guidance are considered in making the non-prosecution decision. In addition, the prosecutor also takes into account the effect of prosecution upon family members of the suspect.

2. Relationship to the Victim

Whether the suspect is a relative to the victim or colleague in the work place is also one of the factors.

3. Factors on the Crime

a) Motive for committing the crime

Whether the crime is a premeditated or non-premeditated one, whether it was provoked by the victim, or whether the

negligence of both the suspect and the victim has combined to cause the accident are also important factors in making a suspension-of-prosecution decision.

b) Method and result of the crime

The dangerousness of the method of committing the crime, the profits the suspect has gained from the crime, the people's concerns on the crime, the effect of the crime on society, the extent of the damage and the degree of possible punishment are also considered by the prosecutor. In addition, the prosecutor considers whether there exist reasons to aggravate or mitigate punishment.

4. Circumstances after the Commission of the Crime

a) Factors related to the suspect

Whether the suspect repents the crime, has apologized to the victim, has tried to compensate for the damages inflicted on the victim, has escaped or has destroyed evidence are important factors in making a suspension-of-prosecution decision.

b) Factors related to the victim

Whether the damages inflicted on the victim have been recovered, and whether the victim wants the suspect to be punished are also considered.

c) Other factors

Other factors considered are social circumstances, change of people's sentiment, time period elapsed after the commission of the crime, repeal of law, change of the extent of punishment, etc.

D. Procedure for a Decision of Suspension of Prosecution

1. Written Oath

In practice, the prosecutor reprimands the suspect for committing a crime and has him/her write an oath stating that he/she will not commit a crime again in the future. Irrespective of whether the suspect is detained or not, the prosecutor summons, admonishes the suspect and has that person write an oath.

In reality, however, the prosecutor sends an admonishing letter to the suspect instead of having him/her write an oath when he/she is not detained. As you may have guessed, it is to reduce the prosecutor's work load.

When the suspect is a juvenile or student, the prosecutor also has the suspect's parent or teacher submit a written oath to the prosecutor stating that he/she will supervise the suspect well so that the suspect will not commit a crime again in the future.

2. Arrangement for the Suspect's Protection

When making a suspension-of-prosecution decision, the prosecutor may entrust the suspect to his/her relative or a member of the Crime Prevention Volunteers Committee. In case there is no person to take the suspect or it is inappropriate in the prosecutor's opinion to entrust the suspect to the above-stated person, the prosecutor may request social organizations such as the Korean Rehabilitation and Protection Corporation to protect the suspect.

3. Disciplinary Action

In principle, when the prosecutor makes a decision of suspension of prosecution against a public official because the crime committed is a trivial one, the prosecutor should ascertain the result of the disciplinary process held by the organization to which such public official

belongs. Moreover, within 10 days from the beginning of the investigation against a public official, the prosecutor is obliged to notify the organization to which that official belongs of the fact that investigation is going on. Generally speaking, such organization does not proceed with disciplinary action against the public official. Consequently, it is rare for the prosecutor to ascertain the results of disciplinary action before making a suspension-of-prosecution decision against a public official.

E. Suspension-of-Prosecution Decision for Juvenile Offenders on the Fatherly Guidance Condition

Suspension of prosecution for juvenile offenders on the fatherly guidance condition is the suspension of prosecution for juvenile offenders under the age of 18. It is a suspension-of-prosecution decision on the condition that the offender is subject to the protection and guidance of a member of the Crime Prevention Volunteers Committee for a period of six months to twelve months after the decision, depending on the possibility of committing a crime again in the future. The volunteers are nominated by the chief prosecutor of the district public prosecutors' office. We have operated this system nationwide since January 1, 1981 to prevent juvenile offenders from being repeat offenders and to rehabilitate them into sound and reasonable citizen. To make this decision, the prosecutor should select the person to protect the offender among the members of the Crime Prevention Volunteers Committee, hand in a referral document to the person, receive from that person a certificate stating that he/she has received the custody of the offender and would bear the responsibility of protecting and guide the offender. Of course, the prosecutor should have the offender and his/her patron submit written oaths.

Even after the decision, at least once a month the prosecutor receives from the volunteer how he/she is instructing and guiding the offender. They also, continue to cooperate with each other.

If the offender does not comply with the volunteer's guidance or commits another crime, the prosecutor may remand the suspension-of-prosecution decision and prosecute the offender.

In light of the low rate of such offenders committing another crime and the high rate of usage of this system, we can say that it has worked very effectively so far.

**F. Suspension-of-Prosecution
Decision on "the Protection and
Surveillance Committee"
Guidance Condition**

This is for offenders who need protection and guidance by experts for a period of six to twelve months depending upon the possibility of the offenders committing another crime in the future. Suspension of prosecution is made on the condition that the offender is subject to the protection and guidance of the Protection and Surveillance Committee.

The prosecutor entrusts the offender to a member of the committee. The procedure for this disposition is similar to the suspension-of-prosecution decision on the fartherly guidance condition. However, this system applies to adult offenders as well.

**G. Limitation on the Prosecutor's
Discretionary Power Not to
Prosecute**

The dangerousness of the principle of discretionary prosecution is that the prosecutor might abuse the power or that the decision will be affected by political pressure. Accordingly, Korean law places some restrictions on such power:

1. Quasi-prosecution by the Court

When a complainant is notified that the prosecutor has made a non-prosecution decision, that person may apply for a ruling to the High Court corresponding to the High Public Prosecutor's Office to which the prosecutor concerned belongs. If the High Court holds that the prosecutor's decision of non-prosecution was inappropriate and refers the case of a district court judgment, prosecution is presumed to have been made to the district court. However, this system applies only to crimes regarding abuse of authority by public officials.

**2. Appeal on the Prosecutor's
Decision of Non-prosecution**

When a complainant is notified that the prosecutor has decided not to prosecute a certain person, he/she may appeal to the competent chief prosecutor of the High Public Prosecutor's Office to which the prosecutor belongs. If the appeal is dismissed, the complainant may reappeal to the Supreme Public Prosecutor's Office.

**3. Notification of Non-prosecution
Decision and Reasons**

Although this is not a direct limitation on the prosecutor's power of non-prosecution, it works as an indirect limitation on such power in that it places psychological pressure on the prosecutor.

**XI. THE CASE OF ILLEGAL LOANS
TO HANBO CONGLOMERATE**

A. Motive of the Investigation

On January 23, 1997, the promisory notes and checks issued by Hanbo Steel Company, the main company of the Hanbo Conglomerate, were dishonored. After that the notes and checks issued by other companies belonging to and dealing with the Hanbo Group were also anticipated to be dishonored, and as a result, it gave rise to serious chaos in the national economy.

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Hanbo Conglomerate took over Kumho Steel Company in Pusan and established Hanbo Steel Company in December 1984. It also proceeded with the construction of Steel Production Facilities at Dangjin with the credit award from banking facilities in December 1990 when the manufacturing capacity of Hanbo Steel Company faced its limit according to the boom of steel production.

There was a nationwide suspicion that President Jeong Tae Soo of Hanbo Group made a secret fund of an enormous amount in the course of the construction of the Dangjin Steel-Production Facilities, and that such embezzlement committed by Jeong was possible due to his connections with politicians, high-ranking officers and staff members of banking facilities.

The CID of the SPPO started the investigation of the cause of the Hanbo non-payment on January 27, 1997 under its own decision that the disclosure of the cause and result of the Hanbo case would be helpful for the recovery of the national economy stricken by the Hanbo non-payment.

B. Process of the Investigation

The CID at first conducted a secret investigation in order to clarify the nationwide suspicion arising from newspaper reports of the Hanbo non-payment on January 23, 1997.

The Central Investigation Department prohibited all 36 persons including the ex-president of the Hanbo Group Jeong Tae Soo from going abroad on January 27, and searched 16 companies of the Hanbo Group including the headquarters of Hanbo and Hanbo Steel Company as well as the houses of Jeong Tae Soo and his sons.

On January 30, 1997, the CID summoned and questioned Jeong Tae Soo. It was found out that Jeong himself issued the dishonored notes and checks beyond the payment ability of Hanbo Group.

Jeong was also found to have received an enormous amount of credit funds from Hanbo Credit Union, one of the companies of Hanbo Group, which is forbidden by law. On January 31, 1997, the CID detained Jeong.

As our investigation went further, it was also found that Jeong made illegal requests to politicians and high-ranking officers of banking facilities in the course of credit awards and permission of authorization of business, and offered them a great sum of bribes in exchange.

From February 1 to 6, 1997, all seven chief persons of banking facilities who sponsored the credit funds supplied to Hanbo Steel Company had been summoned and interrogated about the process of the credit awards and the non-payment.

The present and ex-chief persons of banks who received bribes from Jeong Tae Soo, such as Shin Kwang Sik, Woo Chan Mok, and Lee Chol Soo, were arrested.

From February 10 to 12, 1997, all five politicians—members of the National Assembly Hong In-Kil, Jeong Jae-Chol, and Whang Byung-Tae from the leading party (Shin-Han-Kook Party), another Assemblyman Kwon No Kap from the opposition party (Kuk-Min-Whoe-Eui Party), and the ex-Minister of Home Affairs, Kim Woo-Sok were summoned and interrogated. All of them were arrested as they were found to have received bribes amounting from 200 million to 1,000 million Won from Jeong Tae Soo in exchange for his illegal requests.

The CID tried very hard to find any evidence of embezzlement of the credit funds, on the one hand analyzing account books and computerized materials of Hanbo Group and on the other hand tracing 42 bank accounts of Hanbo Group with a search warrant.

However, these investigations were not easy because Hanbo Group, which had undergone the Sooso Scandal and the graft and embezzlement case of ex-President

Roh of my country, had already discarded many of its own account books.

The CID tried to the best of its ability to figure out the processes of the making and using of the funds accumulated by Hanbo Group by tracing the flow of the credit money on the basis of the account materials gathered through search and confiscations, the retrieval of erased data contained in computers, and the C.P.A.'s data.

The ex-Minister of Trade, Industry and Energy, the present and ex-chief Presidential Secretary of Economy, and many other high-ranking officials of the Ministry of Finance and Economy, the Ministry of Maritime Affairs and Fisheries, and the Bank Supervision Office were also summoned and questioned as to whether they gave unfair privileges to Hanbo Group through licensing and authorization of its business and credit awards.

In this case of nationwide concern and interest, over 300 persons were investigated by 108 persons under the control and supervision of the Chief of the CID. The 108 persons comprised the personnel of the Investigation Planning Officer, the 1st, the 2nd, the 3rd and the Criminal Intelligence Management Division of the CID, research officers of the SPPO, and officers of the Office of National Tax Administration and the Bank Supervision Office.

C. Keypoints of the Investigation

The prosecutorial authorities declared their strong will to make a thorough investigation of the case and set up some important factors that are fully examined as follows.

First, the background which enabled such a big credit award and the cause of non-payment, the use of credit money and any other criminal offence which might have been committed during the construction of the Dangjin Steel-Production Facilities were given priority.

In the investigation of high-ranking officers of banking facilities, we stressed the process of credit awards, possible bribes and the breach of trust relating to the credit awards.

In the investigation of politicians and high-ranking public officials, we concentrated our efforts on finding out any illegal privilege given by them to Hanbo Group, any receipt of illegal benefits as the price of such privileges, and any other betrayal of trust committed after the receipt of bribes.

D. Use and Embezzlement of the Funds

The prosecutorial authorities confirmed that Jeong Tae Soo made a fund of about US\$562 billion (about 5,005,900 million Won) in total sum for the construction of the Dangjin Steel-Production Facilities: a US\$319 billion (about 2,868,600 million Won) credit from the first banking facilities (banks) apart from guaranties, a US\$147 billion (about 1,319,500 Won) credit from the second banking facilities (finance company and mutual savings bank, etc.), and a US\$96 billion (about 867,800 Won) credit made of corporate bonds and personal debt.

The prosecutorial authorities also confirmed that Jeong used about US\$399 billion (about 3,591,200 million Won) for facility equipment and US\$133 billion (about 1,191,900 Won) for facility management, and embezzled the rest of the fund, about US\$30 billion (about 272,800 million Won).

The rest of the fund amounting to about US\$30 billion (about 272,800 million Won) which Jeong embezzled was found to have been mainly used for the establishment of affiliate companies, Jeong's personal tax payment, alimony for Jeong's ex-wife, the purchase of Jeong's private real estate, and illegal lobby money for politicians and chief persons for banking facilities.

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We are still tracing about US\$720 million (about 6,500 million Won), the use of which is still unknown.

E. Result of the Investigation

On February 19, 1997, the prosecutorial authorities indicted all ten persons in detention, that is, two staff members of Hanbo Group, three high-ranking officers of banking facilities including the chief officer of Jaeil Bank, and five public officials including Congressman Hong In-Kil. Four other staff members of Hanbo Group including the Head of Hanbo Steel Company were suspended from prosecution under consideration that they could not but follow the directions of Jeong Tae Soo, who was the president of the whole Hanbo Group.

The ten persons in detention including Jeong Tae Soo were tried at the Seoul District Court, and nine persons were sentenced to 3 to 15 years, except for one person whose sentence was suspended.

The nine persons who were sentenced to imprisonment at the District Court appealed to the Seoul High Court. After a four-month trial, the Seoul High Court rendered suspended sentences to five persons including three congressmen, but rejected Jeong Tae Soo's appeal, on September 24, 1997. His 15-year imprisonment sentence was still upheld, and he appealed to the Supreme Court.

Figure 1

