

# THE EFFECTIVE SYSTEM OF CRIMINAL INVESTIGATION AND PROSECUTION IN KOREA

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## I. INTRODUCTION

Since the dawn of history, every civilized country has developed its own investigation system; exercised investigative power, cracked down on criminals and indicted 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 international seminar, I would like to focus my presentation on the status or the power of the Korean prosecution just right after the overview of the recent trend of crimes in Korea, the criminal investigation organizations. And with related to the case screening, I would like to emphasize 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.

## II. RECENT TRENDS OF CRIME IN KOREA

### A. Crime Rates Compared with Other Countries

The extent of the crime problem in Korea is not as serious as in other foreign countries. Table 1 shows the comparison of crime problems among America, England, Germany, France, Korea, and Japan by focusing on murder and robbery crimes. The number of murder crimes in Korea was 705 in the year of 1996. Meanwhile, America experienced 23,305 murder crimes and Germany experienced 3,751 murder crimes in the same year. The crime rate<sup>1</sup> for murder was 1.6 in Korea, which is the second lowest among the six countries. The murder rate in America was 9.0, which is more than 5 times that of Korea. In cases of robbery, Korea experienced 4,469 incidences while the number of robberies was 618,817 in America. When the incidences are converted into robbery rates by taking into account the sizes of total populations in each of the six countries, the robbery rate of Korea is 10.1, the rate of America is 237.7, that of Germany is 71.0, that of France is 126.9, and that of Japan is 2.1.<sup>2</sup> This comparison indicates that Americans are 23 times more likely to experience robberies and citizens in England, Germany, and France are about 10 times more likely to experience such crimes than people in Korea. Therefore, though Japan is the lowest country with a 1.0 murder rate and a 2.1 robbery rate, it is safe to say that the extent of the crime problem in Korea is not as serious as in other industrialized countries.

The current crime problem in Korea is not at such a life-threatening level like other industrialized countries. However, the legal researchers and practitioners of Korea are now paying special attention to the recent trends of crime problems. Both the quantitative and qualitative aspects of crime problems have become worse since Korean society entered the

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<sup>1</sup> Crime rate is calculated by estimating crime incidences per 100,000 individuals.

<sup>2</sup> It is the same when the crime rates of index crimes (murder, robbery, rape, aggravated assault, burglary, larceny, and auto theft) are compared. The index crime rate of Korea was 2,033 in 1997, while those of America, Germany, and Japan were 4,899, 8,026, and 1,506 respectively (Legal Research and Training Institute, 1999, The White Paper on Crime:39).

expansion of computer and information technologies are causing a great difficulties for the law professions in terms of investigating such new types of crimes and counteracting high-skilled offenders.<sup>3</sup>

**B. Overall Trends of Crime in Korea**

Table 2 shows the overall trends of crime incidences from 1966 to 1998. Major characteristics of the overall trend can be categorized as follows:

- (i) Crime rates tend to gradually increase with the years. For instance, the crime rate in 1966 was 1,358, that of 1976 was 1,408, that of 1986 was 1,966, and the crime rate reached 3,803 in 1998. The current level of crime incidences in Korea is relatively low compared with the 4,899 and 8,026 of America and Germany.
- (ii) Crime rates have increased rapidly in recent years. It took about 20 years for crime rates to reach 2,000 crimes per 100,000 persons, but it took only 6 years to reach 3,000 crimes.
- (iii) Arrest rates are pretty high compared to those of other countries. The average arrest rate is about 90 percent.<sup>4</sup>

**C. Trends of Newly Emerging Crimes**

1. Computer Crimes

Various kinds of computer crimes have newly emerged with the development of computer technology and Internet services. Computer crimes<sup>5</sup> have unique characteristics different from other traditional crimes. First, computer crimes are generally repetitious and continuous unless they are detected. Second, they are committed by persons without geographical limitations. Third, they are hard to detect as they are generally sophisticated and usually committed by persons possessing specialized expertise.

The Supreme Public Prosecutor’s Office reports that computer crimes tend to increase in recent years. Table 3 shows the trends of computer crimes. As shown in Table 3, there has been a 1,251.4% increase in the numbers of persons arrested for computer crimes from 1996 (37 persons) to 1999 (500 persons). It can be observed that computer fraud such as a fraudulent transactions on on-line markets is the most frequent type of computer crime. It comprises about 49% of the total computer crime. Illegal access such as hacking and theft of other person’s IDs and passwords is the next frequent computer crime. From 1996 to 1999, about 171 persons have been arrested for this type of illegal activity.

2. Drug-related Crimes

In Korea, drug-related crimes are controlled by three distinct laws and regulations concerning narcotics, marijuana and psychotropic medicine. Table 4 shows the trends of drug-related crimes from 1989 to 1998. As shown in Table 4,

<sup>3</sup> Soon-Rae, Lee, Recent Trends of Crime and Countermeasures to Deal with Crime Problems in Korea, The 4th International Training Course on Crime Prevention and Criminal Justice, 2000. 10., p. 127.

<sup>4</sup> Arrest rates are obtained through the number of arrests made over the number of crime incidences occurring multiplied by 100.

<sup>5</sup> Computer crimes can be sorted into two categories: crimes where a computer is an object of criminal activity and crimes where a computer is an instrument for crime.

- a. Computer crime where the computer is an object of criminal activity
  - crimes against computer hardware
    - disruption of physical configuration of computer
    - theft of computers
  - crimes against computer software
    - distributing computer viruses and sending mail bombs
    - hacking the operation of computer system
    - illegally copying computer software
- b. Computer crime where computer is an instrument for crime
  - intentional modification of input information, operating software, and output
  - unlawful access to computerized data (computer spy)
  - business of copied computer software
  - computer crimes related to VAN or commercialized network services
    - provision of illegally copied software
    - dissemination of legally prohibited information (pornographic materials, political ideology threatening national security)
    - distribution of malicious information defaming innocent person’s integrity
    - theft of other person’s IDs and passwords
    - fraudulent transactions on on-line markets

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there were 8,350 drug-related crimes in 1998. They occupied about 0.4% of the 1998 total crimes. The rate of drug-related crime is 17.98. Such a rate is much lower than those of assault (344.29), larceny (166.93), and fraud (214.35).

The total number of drug-related crimes continued to decrease in the early 1990's, but it has increased since 1993. Among drug-related crimes in 1998, those in violation of the Psychotropic Medicine Control Act are the most frequent, following by those violations against the Marijuana Control Act and Narcotics Act. The recent increase since 1995 can be explained in terms of factors such as the growth in the quantity of drugs smuggled into Korea as more Koreans travel around the world.

### 3. Organized Crimes

The volume of the Korean economy rapidly expanded during the 1980s. As the economic conditions got better, there happened a transformation in people's attitudes. The traditional attitudes emphasizing diligence, abstinence and hard work were no more sincerely accepted in people's minds. Instead, they started to seek a life of more pleasurable and enjoyable ways. It was during the period when so-called 'immoral' businesses started to open to a greater extent. Luxurious facilities such as 'adult disco clubs', 'adult entertaining shops' or 'hotel gambling' were newly opened one after another.

Organized crimes<sup>6</sup> took advantage of such opportunities. The crime organizations, which were scattered around with tiny memberships, became involved in this 'immoral' businesses. With the profits from the businesses, the organized crimes recruited new members and invested enough money in an attempt to shape the loosely connected organizations into tightly controlled forms. The establishment and formation of organized crime firms appeared during the 1980s. The 1990 Presidential Declaration on 'War on Crime' made a significant impact on such newly formed crime organizations. Massive efforts by police squads and prosecutor's offices nationwide were devoted to dissolve organized crimes. Problems caused by organized crimes were diminished by the efforts.<sup>7</sup> But, since the middle of 1990s when the convicted members tended to be released from incarceration, the Task Forces at the level of District Prosecutor's Office have noticed several attempts of ex-members to restore the previous crime organizations.

## III. CRIMINAL INVESTIGATION ORGANIZATIONS OF KOREA

### A. **Overview of the Investigation Organizations**

Criminal investigation organizations of Korea are divided into two categories. One is prosecutors and the other is judicial police officers. The public prosecutor has authority to investigate criminal cases and is entrusted to exclusive authority, albeit with a minor exception, to initiate criminal procedures by indicting the offenders.<sup>8</sup> The judicial police officer also has authority to conduct investigations under the supervision of the public prosecutor.<sup>9</sup> Judicial police officers are made up of general judicial police officers that deal with criminal cases in general and special judicial police officers that handle the specific type of cases set out in the relevant laws.

When a crime occurs, the judicial police officer usually initiates the investigation. In reality, a police officer investigates daily crimes such as thefts, violence or traffic related crimes. Upon conclusion, the case is then transferred to the public prosecutor's office where a public prosecutor continues with the investigation by questioning the suspect and related persons, examining documents and other evidence. The public prosecutor may conduct additional investigations as necessary. Due to such investigations by the public prosecutor, those who need not be punished will be released from the process at an early stage. Consequently, the conviction rate at trial is rather high, constantly more than 90 percent. In the case of complex offenses and white-collar crimes, such as large-scale bribery cases involving politicians or high ranking public officials, economic offenses, narcotics offenses, environmental offenses, organized crimes, tax evasions and police misconduct, the public prosecutor can initiate the investigation *ex officio* or without prior investigation by the judicial police officer.

Public Prosecutor's Offices are under the jurisdiction of the Ministry of Justice. They consist of the Supreme Public Prosecutor's Office, the High Public Prosecutor's Office, the District Public Prosecutor's Office and their respective

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<sup>6</sup> Organized crimes are often classified into four types: a) social and political organized crime, such as terrorist groups or guerilla groups, b) predatory organized crimes, which specialize in robbery or larceny like slum gangs, c) organized crimes seeking psychological satisfaction, such as biker groups, d) syndicate organized crimes, which are involved in 'immoral' enterprises providing illegal services to demanding clients.

<sup>7</sup> It was estimated in 1994 that the organized crimes consist of 364 families and include about 11,117 members. About 10,616 members were once arrested and 3,622 were imprisoned.

<sup>8</sup> Article 195 of the Criminal Procedure Act.

<sup>9</sup> Article 196 of the Criminal Procedure Act.

Branch Offices, each corresponding to the court within their jurisdiction. Police officers belong to the National Police Agency and are referred to as ‘judicial police officers’ in the Criminal Procedure Act.<sup>10</sup> The Korean police have almost the same functions and duties as those of other countries. And there is a National Intelligence Service, which investigates national security crimes such as espionage, insurrection, inducement of foreign aggression, rebellion and violation of the National Security Act.<sup>11</sup> It also performs analysis and collection of intelligence concerning national security.<sup>12</sup> And there are special investigative agencies which are described as ‘special judicial police officers’ in the Criminal Procedure Act.<sup>13</sup> In the case of special offences such as the customs offence of tax evasion, special investigative agencies, such as the Customs Office, the Tax Administration Agency conduct the investigations.

### **B. Relationship between Prosecutor and Judicial Police Officer**

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-obedience.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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/her duty, that prosecutor can, through his/her chief prosecutor, request the officer to stop the investigation or request his/her superior officer to replace him/her.<sup>17</sup> 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:<sup>18</sup>

#### 1. Prosecutors’ Authority to Inspect the Place of Arrest or Detention

To deter unlawful arrest or detention, the chief prosecutor of the district public prosecutor’s office or its branch offices dispatches prosecutors once a month to the place of the investigation where a suspect is being arrested or detained. The inspecting prosecutor examines relevant documents and questions the arrestee or detainee.<sup>19</sup> 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 transfer the case to the prosecutor’s office.<sup>20</sup> 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.

#### 2. Right to Request the Judge to Issue an Arrest Warrant

Under Korean law, the judicial police officer is not entitled to directly request the judge to issue an arrest warrant. A judicial police officer should apply for an arrest warrant with the prosecutor.<sup>21</sup> If such an application is made by a judicial police officer, the prosecutor examines the application documents and decides whether to request the judge to issue the arrest warrant. The same is true of a warrant for search, seizure or inspection.<sup>22</sup>

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<sup>10</sup> Article 196 of the Criminal Procedure Act.

<sup>11</sup> Article 3 of the National Intelligence Service Act.

<sup>12</sup> Functions and duties of the National Intelligence Service are so similar to the CIA in the United States of America that it is commonly called KCIA, which means Korean CIA.

<sup>13</sup> Article 197 of the Criminal Procedure Act

<sup>14</sup> Article 196 of the Criminal Procedure Act

<sup>15</sup> Article 53 of the Public Prosecutor’s Office Act.

<sup>16</sup> Article 53 of the Public Prosecutor’s Office Act.

<sup>17</sup> Article 54 of the Public Prosecutor’s Office Act.

<sup>18</sup> Kwang-Am Kim, *The System of Criminal Investigation and Prosecution in Korea*, The 5th International Training Course on Crime Prevention and Criminal Justice, 2001. 10., pp. 142-146.

<sup>19</sup> Article 198-2, Section 1 of the Criminal Procedure Act.

<sup>20</sup> Article 198-2, Section 2 of the Criminal Procedure Act.

<sup>21</sup> Article 200-2 of the Criminal Procedure Act.

<sup>22</sup> Article 215 of the Criminal Procedure Act.

3. 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.<sup>23</sup> 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.<sup>24</sup> 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 prosecutor's right to control judicial police officers.

4. 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.<sup>25</sup>

5. 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 prosecutors' office having jurisdiction over the investigation.<sup>26</sup> 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.

#### IV. INDEPENDENCE OF PUBLIC PROSECUTORS IN KOREA

As quasi-judicial officers, prosecutors must remain truly objective and impartial in carrying out their duties. To achieve these goals, prosecutors must be independent which means being free from any interference. So in the performance of their duties, prosecutors should be subordinated only through laws in order to insulate the criminal justice system from being abused by political opportunism. As the keeper of the rule of law, prosecutors must make sure that all are equal under the law regardless of their status in society. Particularly, in the case that powerful politicians are breaking the law themselves, it is very important that prosecutors be in a position to stand up and demand that justice must prevail. In order to ensure the independence of prosecutors, Korean laws provide the following:

##### A. Guarantee of Prosecutor's Status

The President has the authority to appoint and assign public prosecutors upon recommendation from the Minister of Justice. The qualifications for the public prosecutor are identical to that of the judge: passing the national judicial examination and completion of a two-year training course at the Judicial Research and Training Institute.<sup>27</sup> In addition to these requirements, some professional experience is needed to be appointed as a high-ranking public prosecutor.<sup>28</sup> The status of the public prosecutor, like that of the judge, is guaranteed by law. The public prosecutor may not be dismissed or suspended from the exercise of his/her powers or be subject to a reduction in salary other than through impeachment, conviction of crimes punishable by imprisonment or more severe penalties or other disciplinary actions based on relevant laws and regulations.<sup>29</sup>

##### B. Limitation of Justice Minister's Direction

In view of the importance of the public prosecutor's role in criminal proceedings, the Public Prosecutor's Office Act states that the Minister of Justice, as the chief supervisor of prosecutorial functions, may generally direct and supervise public prosecutors but for specific cases can only direct and supervise the Prosecutor General.<sup>30</sup> This is to safeguard the

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<sup>23</sup> Article 200-3, Section 1 of the Criminal Procedure Act.

<sup>24</sup> Article 200-3, Section 2 of the Criminal Procedure Act.

<sup>25</sup> Article 219 of the Criminal Procedure Act.

<sup>26</sup> Article 2 of the Rules on Execution of Duties of Judicial Police.

<sup>27</sup> Article 29 of the Public Prosecutor's Office Act.

<sup>28</sup> Article 27, 28 of the Public Prosecutor's Office Act.

<sup>29</sup> Article 37 of the Public Prosecutor's Office Act.

<sup>30</sup> Article 8 of the Public Prosecutor's Office Act.

public prosecutor's quasi-judicial status by ensuring each public prosecutor's independence from outside influence with regard to the case in hand.

**C. Status of Prosecutor General**

The Prosecutor General in Korea shall take charge of affairs of the Supreme Public Prosecutor's Office, exercise general controls over the prosecuting affairs, and direct and supervise public officials of public prosecutor's offices. So, the role of the Prosecutor General in Korea is extremely important in the criminal justice system. In order to ensure the independence of the Prosecutor General from political influence, the term of the Prosecutor shall be 2 years, and he shall not be re-appointed. And, he shall not promote or join any political party within a two-year period after he retires from office.<sup>31</sup>

**D. Prohibition of Prosecutor's Political Movement**

In order to secure the independence of public prosecutors from political influences, the Public Prosecutor's Office Act provides that "No public prosecutor shall commit any of the following acts while in office: (1) To be a member of the National Assembly or a local council, (2) To participate in any political movement, (3) To be engaged in a business the purpose of which is to obtain any monetary profit, (4) To be engaged in any remunerative duties without permission of the Minister of Justice."<sup>32</sup>

**V. PUBLIC PROSECUTOR'S AUTHORITY IN CASE SCREENING**

**A. Criminal Investigation**

Korean prosecutors have the authority and duty to investigate all crimes. An 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.<sup>33</sup> But, in reality, prosecutors cannot investigate all the crimes due to the limitation in the number of prosecutors. So, most of the criminal cases are conducted by judicial police officers rather than prosecutors.<sup>34</sup> Instead, prosecutors screen the cases conducted by judicial police officers. Consequently, it is very important for 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.<sup>35</sup> In case 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 has been rendered. Under 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 prosecutor's office monopolizes the authority of prosecution.<sup>36</sup>

In addition, prosecutors have the discretionary power to suspend prosecution even if there is sufficient evidence to maintain prosecution.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> This system is based

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<sup>31</sup> Article 12 of the Public Prosecutor's Office Act.

<sup>32</sup> Article 43 of the Public Prosecutor's Office Act.

<sup>33</sup> Article 195 of the Criminal Procedure Act.

<sup>34</sup> In 1999, the number of suspects in cases transferred to the prosecutors by judicial police officers was 2,327,445, which accounted for 97% of 2,400,485 suspects in all the cases accepted by the prosecutor's offices.

<sup>35</sup> Article 246 of the Criminal Procedure Act.

<sup>36</sup> Article 246 of the Criminal Procedure Act.

<sup>37</sup> Article 247 of the Criminal Procedure Act.

<sup>38</sup> Article 196, Section 1 of the Criminal Procedure Act.

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.<sup>40</sup> 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.<sup>41</sup> 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 participate in the trial because the prosecutors are legal experts and representatives of the public interest.

### **VI. CASE SCREENING AT SEVERAL STAGES**

#### **A. Investigation**

There are two kinds of investigation methods in Korea. The one is compulsory investigation which is conducted under a warrant issued by a judge and the other is voluntary investigation which is conducted without a warrant. In Korea, a public prosecutor can investigate the case at his/her own initiative or screen the cases conducted by police officers at each of these stages.

##### **1. Compulsory Investigation**

First, I would like to tell you about arrest and detention during compulsory investigation. Before January 1st, 1997, we only had a detention warrant system in the Criminal Procedure Law. But, through the revision of the Criminal Procedure Law, we introduced the arrest warrant system additionally from the beginning of 1997. If there is a probable cause to suspect that a person committed a crime and in case he/she refuses to appear in an investigative agencies' offices without any reasonable ground or there is a concern that he/she may disappear, the investigative authorities can arrest a suspect with an arrest warrant issued by a judge.<sup>42</sup> A request for a warrant to a judge may be made only by a public prosecutor; police officers must apply to a public prosecutor for a warrant. So, at this stage, a public prosecutor can screen the cases applied by police officers. If a public prosecutor who has screened the case, thinks an arrest warrant is necessary, he/she requests an arrest warrant from a judge. But, when a public prosecutor thinks a warrant is not necessary, he/she rejects a warrant request by police officers. If a public prosecutor thinks there is not enough evidence for an arrest warrant, he/she directs police officers to further the investigations. However, the following cases are exceptions to the warrant requirement for arrest:

- (i) Any person may arrest, without a warrant an offender who is committing or has just committed an offense (so-called *in flagrante delicto* arrest).
- (ii) The police or public prosecutor may arrest a person who is believed to have committed an offense punishable by death, life imprisonment or up to three years imprisonment when there is not sufficient time to obtain a warrant in advance.<sup>43</sup>

If the police officer who arrests a suspect, thinks that detention of a suspect is necessary, a detention warrant must be requested from a judge through the same procedure as in an arrest warrant within 48 hours from arrest.<sup>44</sup> So, investigative

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<sup>39</sup> As long as criminal investigation is concerned, judicial police officers are directed and supervised by prosecutors (Article 4, Section 1 of the Public Prosecutor's Office Act). However, the authority of judicial police officers widely ranges over protection of people's life, body and property, prevention, suppression and investigation of crime, gathering information about crime, control of traffic, social stabilization and peace-keeping (Article 3 of the Police Act).

<sup>40</sup> Article 4 of the Public Prosecutor's Office Act.

<sup>41</sup> Article 4 of the Public Prosecutor's Office Act.

<sup>42</sup> Article 200-2 of the Criminal Procedure Act.

<sup>43</sup> Article 200-3 of the Criminal Procedure Act.

<sup>44</sup> Article 200-4 of the Criminal Procedure Act.

authorities can detain a suspect when they have a detention warrant issued by a judge. A request for a warrant may be made only by a public prosecutor; police officers must apply to a public prosecutor for a warrant. The public prosecutor requests a detention warrant from a judge after screening the case if the following conditions are met:

- (i) The suspect has no fixed dwelling; or
- (ii) There are reasonable grounds to believe the suspect may flee or destroy evidence.<sup>45</sup>

When the police detain a suspect, the suspect must be released if not transferred to the public prosecutor within 10 days.<sup>46</sup> After the completion of the investigation, the police transfers the suspect to the public prosecutor's office. The public prosecutor can detain the suspect for 10 days.<sup>47</sup> The 10 days detention in police custody and a further 10 days detention under the public prosecutor are granted by a detention warrant. If more investigation is necessary, the judge can grant detention of an additional 10 days by the public prosecutor's request.<sup>48</sup> The maximum term of pre-prosecution detention is thus 29 days, since the detainee's transfer day from the police to the prosecutor is calculated in the detention period on both sides.

Before questioning, the police or a public prosecutor must inform a suspect of his/her right to remain silent.<sup>49</sup> A suspect also has the right to consult with a lawyer during pre-trial detention.<sup>50</sup> Suspects in police custody are held in police detention cells, while those who have been transferred to the public prosecutor's office are detained in official pretrial detention houses. The Constitution provides detainees with the right to request the court to review the legality of detention before indictment is instituted.

## 2. Search and Seizure

Search and seizure is also one of the compulsory investigations, and the procedure of issuing a search and seizure warrant is similar to that of an arrest and detention warrant. The investigative agencies can search and seize places and things when they have a search and seizure warrant issued by a judge.<sup>51</sup> A request for a warrant may be made only by a public prosecutor; police officers must apply to a public prosecutor for a warrant.<sup>52</sup> So, at this stage, a public prosecutor can screen the cases applied for by police officers. But the following cases are exceptions to the warrant requirement for search and seizure:

- (i) When the police or a public prosecutor arrests or detains a suspect, they can search and seize without a warrant at the crime scene.<sup>53</sup>
- (ii) The police or a public prosecutor can search and seize things, which are owned or possessed by a suspect who can be under urgent arrest<sup>54</sup> within 48 hours from arrest.<sup>55</sup>
- (iii) the police or a public prosecutor can seize things which are brought forward by the owner or possessor.<sup>56</sup>

## 3. Wiretapping

Like other countries, secrecy of communication is protected by the Constitution in Korea.<sup>57</sup> But as you know, in some crime investigations, the police and a public prosecutor need wiretapping in order to apprehend fugitives and investigate criminal activities. At this point, there is a conflict of interest between the constitutional right and the investigative need. We restrict the legal wiretapping strictly by regulating the legal wiretapping by the special law named Communication Secrecy Protection Act. Under this Act, wiretapping can only be permitted under strict conditions and by restricted procedures, and a request for wiretapping permission may be made only by a public prosecutor; police

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<sup>45</sup> Article 201 of the Criminal Procedure Act.

<sup>46</sup> Article 202 of the Criminal Procedure Act.

<sup>47</sup> Article 203 of the Criminal Procedure Act.

<sup>48</sup> Article 205 of the Criminal Procedure Act.

<sup>49</sup> Article 12, Section 2 of the Constitution of the Republic of Korea, Article 200, Section 2 of the Criminal Procedure Act.

<sup>50</sup> Article 12, Section 4 of the Constitution of the Republic of Korea.

<sup>51</sup> Article 215, Section 1 of the Criminal Procedure Act.

<sup>52</sup> Article 215, Section 2 of the Criminal Procedure Act.

<sup>53</sup> Article 216 of the Criminal Procedure Act.

<sup>54</sup> It means a case in which the police or public prosecutor can arrest a person who is believed to have committed an offence punishable by death, life imprisonment or up to three years imprisonment without an arrest warrant, when there is not sufficient time to obtain a warrant in advance, as is described above.

<sup>55</sup> Article 217 of the Criminal Procedure Act.

<sup>56</sup> Article 218 of the Criminal Procedure Act.

<sup>57</sup> Article 18 of the Constitution of Republic of Korea.



officers must apply to a public prosecutor for permission.<sup>58</sup> So, at this stage, a public prosecutor can screen the case applied by police officers.

The public prosecutor requests a written permission for wiretapping from a judge under the following conditions:

- (i) There is enough ground to suspect that some specific crimes which are enumerated in the Act are planned, performed or were performed.
- (ii) It is difficult to hinder commitment of crime, apprehend a criminal, or collect the criminal evidence with methods other than wiretapping.<sup>59</sup>

The maximum period for wiretapping is three months, but an additional three months can be granted by a judge, if necessary.<sup>60</sup>

#### 4. Voluntary Investigation

In Korea, voluntary investigation involves interrogation of a suspect by summons, inspection at the scene, interrogation of a relevant witness and so on. If it is necessary for criminal investigation, a public prosecutor and the police can demand the appearance of a suspect and listen to the suspect's statement.<sup>61</sup> A public prosecutor and the police must notify the suspect that he/she has the right to remain silent in advance before listening to the suspect's statement.<sup>62</sup> But a public prosecutor and the police can't force the suspect to appear without an arrest or detention warrant because interrogation by summons is a voluntary investigation.

Like other countries, interrogation of a suspect is one of the most important investigation methods. When a crime is committed, investigative agencies usually perform inspection on site at the crime scene, if it is necessary. At the inspection on site, they try to recreate the crime situation, analyze the crime and collect the relevant evidence. This is a very important criminal investigation method, especially when serious and violent crimes such as murder, robbery, rape are committed. A public prosecutor and the police can demand appearance of a witness by summons and listen to the witness's statement. But a public prosecutor and the police can't force the witness to appear.

By the way, with just the traditional investigation methods, we can't solve the new kinds of crime which are getting more sophisticated and ingenious. So, public prosecutors and the police utilize various advanced devices, for example, computer systems, VTRs, poly-graphs and other equipment in performing their prosecutorial functions in order to enhance the efficiency of criminal procedure. For forensic criminal investigation there are several laboratories in the Supreme Public Prosecutor's Office, that is, lab for DNA Analysis Section, Drug Analysis Section, Polygraph Section, Document Examination Section, Criminal Photography Section, Phonetic Analysis Section and Psychological Analysis Section. As at the beginning of this year, we have the most state-of-the-art identification equipment such as Automatic DNA Sequencer, Computer Polygraph System. Also, investigation equipment such as Passive Night Vision System, Wireless Video Camera, Cellular Telephone Interceptor are also available for scientific investigation. In addition we set up a plan in which Criminal DNA Data Base will be established and fully operated in the near future. Besides, there is the National Scientific Investigation Laboratory that assists scientific investigation which the police perform. The laboratory is under the direction of the Ministry of Government Administration and Home Affairs and it actually performs a central function and duty in the police's scientific investigation.

When police officers conduct voluntary investigations and report the results of the investigations, the public prosecutor should screen the case thoroughly. If the public prosecutor can not be confident of the case, he should re-investigate the case at his/her own initiative or direct the police officer to make up for the result of the investigation.

#### **B. 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. For the purpose of this disposition, all investigative agencies transfer the cases to the public prosecutor and the public prosecutor completes the investigation and decides his/her disposition. To institute prosecution, the public

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<sup>58</sup> Article 6, Section 1 of the Communication Secrecy Protection Act.

<sup>59</sup> Article 5 of the Communication Secrecy Protection Act.

<sup>60</sup> Article 6, Section 7 of the Communication Secrecy Protection Act.

<sup>61</sup> Article 200 of the Criminal Procedure Act.

<sup>62</sup> Article 12, Section 2 of the Constitution of Republic of Korea.

prosecutor should be confident the case can be proven beyond a reasonable doubt in court. When he/she is not confident, he/she should not institute prosecution. He/She should drop the case for insufficiency of evidence. Due to this practice, the conviction rate at trial is constantly very high, more than 99 percent in Korea. But, it's a very hard task for a public prosecutor to complete an investigation.

1. Presentation of Indictment

To prosecute a suspect, the prosecutor should present a written 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 a 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.

2. Principle of Presentation of Indictment Only

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

## VII. DISCRETIONARY POWER OF PROSECUTORS IN CASE SCREENING

### A. Introduction

Under Korean law, prosecutors have the discretionary power to suspend prosecution even if there is sufficient evidence to convict a suspect.<sup>63</sup> This is called the Principle of Discretionary Prosecution. It is a concept contrary to the Principle of Compulsory Prosecution.<sup>64</sup> 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 a principle can not effectively control a prosecutor's 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 247 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, circumstances, 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. So, to ensure whether these factors exist or not is also a very important purpose of the investigation by the public prosecutor and police officer. In Korea, many cases are dropped under the procedure as suspension of prosecution. As for the offences stipulated in the Criminal Code such as theft, violence, suspension of prosecution is exercised in about 60 percent of the cases.

### 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, we have to admit that the test for non-prosecution differs slightly from one prosecutor to another prosecutor. It is due to the different views on life of individual prosecutors. The test might also vary with the times or change in people's way of thinking. Accordingly, we 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

##### (i) *Age*

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

##### (ii) *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.

##### (iii) *Intelligence*

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

##### (iv) *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 a colleague in the work place is also one of the factors.

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<sup>63</sup> Article 247, Section 1 of the Criminal Procedure Act.

<sup>64</sup> 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.

3. Factors Related to the Crime

(i) *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.

(ii) *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 about 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 Committing the Crime

(i) *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.

(ii) *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.

(iii) *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 prosecutor's 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 citizens.

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 guiding 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 Probation Committee Guidance Condition**

This is for offenders who need probation 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 guidance of the 'Probation 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 fatherly guidance condition. However, this system applies to adult offenders as well.

#### **G. Control of the Prosecutor's Discretion**

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. So, it is necessary to set some limitation on the prosecutor's discretionary power. The criteria for the exercise of discretionary power or its control should comply with the ends of criminal justice. In this sense, the discretionary power is to be exercised and controlled on a standard of rationality. There are several controlling devices which can be classified into two categories: they are internal controls and external controls.

##### **1. Internal Control**

###### **(i) *Control by superior***

All decisions made by a prosecutor are subject to the control of his superior. The superior is required to review all decisions made by prosecutors. He is to check the propriety of the decision. Also, he must review whether or not the decision complies with the criteria of prosecutorial policy. In practice, the Deputy Chief Prosecutor reviews all cases disposed of by prosecutors prior to the review by the Chief Prosecutor who actually checks only selected cases. The Deputy Chief checks not only the propriety of the decision but clerical mistakes in the case files. The prosecutors are required to write the reason for the decision not to prosecute. The reasoning must be succinct and precise. Writing the reason of the decision not to prosecute is regarded to be important in terms of the control of discretion. The prosecutor is psychologically restrained by this requirement of writing reasons. The Chief or the Deputy Chief Prosecutor usually reads the decision document which is written by the prosecutor. If the Chief or the Deputy Chief thinks that the Decision is inappropriate, then he asks the prosecutor for an explanation of the reasoning for the decision. They discuss the matter thoroughly until they reach a common conclusion. This practice is generally based on the theory that the assigned prosecutor knows more than his superior about the case. In this case, they call the prosecutor to explain the case and the reasoning of the decision. In case of a conflict of opinion on legal issues, superiors are likely to yield to prosecutors, because the legal responsibility for the specific decision is charged not to the superior but to the prosecutor. In the matter of policy, however, prosecutors usually concede to superiors. If a prosecutor anticipates conflict on opinion with a superior, he may discuss the case with them prior to making the decision.

###### **(ii) *Control by general guidelines***

Prosecuting discretion is also controlled by general guidelines of instructions issued by the Prosecutor General. Since the Prosecutor General has a duty to carry out unified prosecuting policy, he, from time to time, issues direction or instruction in the form of general guidelines. A prosecutor is bound by these official guidelines. If he willfully disregards these guidelines, he may be subject to disciplinary punishment. And, the Prosecutor General annually dispatches an inspection team which consists of one Supreme Prosecutor and several Senior Prosecutors to all subordinate prosecutor's offices in order to review the propriety of decisions made by prosecutors. Normally, the emphasis of the inspection is given to the decisions not to prosecute. If they find any impropriety, they may issue a mandate in the name of the Prosecutor General to re-investigate or institute prosecution. The outcome of this inspection is utilized as reference material in the formation of prosecuting policy for the next year.

(iii) *Appeal on the prosecutor's decision of non-prosecution*

This process can only be initiated by petition of a complainant who is not satisfied with the decision not to prosecute. 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.<sup>65</sup> If the appeal is dismissed, the complainant may re-appeal to the Supreme Public Prosecutor's Office. This is regarded as a relatively strong control device.

2. External Control

(i) *Quasi-prosecution by the court(Judicial Control)*

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.<sup>66</sup> 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.<sup>67</sup> However, this system applies only to crimes regarding abuse of authority by public officials.

(ii) *Notification of non-prosecution decision and reasons*

A prosecutor is, by statute, required to inform a complainant of the decision to prosecute or not to prosecute within seven days after the date of disposition of the case. Particularly in the case of a decision not to prosecute, the prosecutor has to explain, in writing, the reason why prosecution was not instituted within seven days after he receives a request from a complainant. Although this is not a direct control on the prosecutor's power of non-prosecution, it works as an indirect control device in that it places psychological pressure on the prosecutor.<sup>68</sup>

## VIII. CONCLUSION

What should be the role of public prosecutors in criminal investigation is one of the most controversial questions among nations of different legal traditions and practices. The border-line between the jurisdiction of the prosecutors and police officers is quite difficult to be drawn particularly on the role of criminal investigation. The role of prosecutors in criminal investigation ranges from total control as in the case of Korea, France and Germany, or taking a leading role as in Japan and the United States, to separation of investigation and prosecution as in Thailand, England and Wales after 1986, or complete control by police as in some commonwealth countries.

In my experience as a prosecutor, I believe that prosecutors must play an active role in criminal investigation. In order to ascertain the truth of the matter before making the decision to prosecute, the prosecutor must be allowed to conduct investigations on his/her own initiative or direct judicial police officers as far as criminal investigations are concerned. By participating closely in the conduct of investigation, the prosecutors not only will be able to make more effective decisions and conduct more efficient litigation, they will also be able to supervise the legality of the investigation. As a consequence, they will be in a better position to do justice to both the victim of crime and the suspect as well as to fulfill their duty in protecting society at large. And, I would also like to emphasize that prosecutors must be impartial and objective in the performance of their duties. They should play an active role in criminal investigations so as to maintain the highest standard of efficiency in investigations and prosecution, while, at the same time, safeguarding the rights of the accused and crime victims. To be able to discharge their functions effectively, prosecutors, like judges, should be independent and be immune to undue influences, especially political ones. At the same time, prosecutors should be held accountable and be transparent in the performance of their duties.

In concluding, due to the fact that crimes are no longer confined to the boundary of one country, the functions of prosecutors should be expanded to include not only domestic matters but also issues of international cooperation. In the so-called "global villages", international cooperation and legal assistance on criminal matters are very important and urgent to prevent and suppress transnational crimes. Only with the help of foreign countries' law enforcement agencies, we can cope with the international crimes and protect our society. So, I hope that this international seminar can be a cornerstone to promote international criminal cooperation and legal assistance.

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<sup>65</sup> Article 10 of the Public Prosecutor's Office Act.

<sup>66</sup> Article 260 of the Criminal Procedure Act.

<sup>67</sup> Article 262 of the Criminal Procedure Act.

<sup>68</sup> Article 258, Section 1 of the Criminal Procedure Act.

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APPENDIX A

Table 1 COMPARISON OF THE EXTENT OF CRIME PROBLEMS

	America	England	Germany	France	Korea	Japan
Murder Incidence	23,305	1,375	3,751	2,696	705	1,279
Crime rate	9.0	2.7	4.6	4.7	1.6	1.0
Robbery Incidence	618,817	60,016	57,752	73,310	4,469	2,684
Crime rate	237.7	116.7	71.0	126.9	10.1	2.1

Data : Japan Ministry of Justice Research Center,1996 : 398

Table 2 CRIME INCIDENCES AND ARREST RATES FROM 1966 TO 1997

	Incidences	Arrests	Arrest rate (%)	Num. of Arrested	Population (unit:1,000)	Crime rate
1966	399,820	286,613	71.7	385,873	29,436	1,358
1967	361,582	264,833	73.2	369,003	30,131	1,200
1968	333,098	259,362	77.9	391,551	30,838	1,080
1969	352,070	332,851	94.5	419,122	31,544	1,116
1970	333,537	289,637	86.8	415,504	32,241	1,035
1971	351,574	293,279	83.4	395,467	32,883	1,069
1972	369,839	330,890	89.5	442,274	33,505	1,104
1973	323,363	289,157	92.2	398,431	34,103	948
1974	337,535	292,839	86.8	400,266	34,692	978
1975	387,207	335,944	86.8	462,908	35,281	1,097
1976	504,630	450,059	89.2	609,177	35,849	1,408
1977	506,545	448,168	88.5	600,197	36,412	1,391
1978	513,165	438,265	85.4	589,008	36,969	1,388
1979	557,793	491,567	88.4	651,998	37,534	1,481
1980	595,277	475,353	79.9	697,629	38,124	1,561
1981	625,934	549,532	87.8	734,981	38,723	1,616
1982	658,371	575,029	87.3	784,564	39,326	1,674
1983	786,553	656,204	83.4	859,097	39,910	1,971
1984	803,792	693,387	86.3	888,105	40,406	1,989
1985	810,416	693,270	86.5	885,765	40,806	1,986
1986	809,660	704,874	87.0	902,895	41,184	1,966
1987	946,390	825,601	87.2	1,054,407	41,575	2,276
1988	968,965	856,517	88.4	1,114,468	42,380	2,308
1989	1,073,997	949,308	88.4	1,179,156	42,380	2,534
1990	1,171,380	1,047,760	89.0	1,326,775	42,793	2,737
1991	1,230,118	1,130,262	91.9	1,418,168	43,268	2,843
1992	1,241,102	1,135,146	91.5	1,451,942	43,663	2,842
1993	1,356,914	1,298,637	95.7	1,656,113	44,056	3,080
1994	1,373,407	1,246,582	90.8	1,582,428	44,453	3,090
1995	1,399,085	1,269,375	90.7	1,599,930	44,850	3,119
1996	1,494,846	1,358,982	90.9	1,681,321	45,248	3,304
1997	1,588,613	1,452,097	91.4	1,802,720	46,991	3,454
1998	1,765,887	1,632,678	92.5	2,010,814	46,430	3,803

**Table 3 TRENDS OF COMPUTER CRIMES**

	<b>Number</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Total	1,125	37	233	355	500
Modification of Electrical Documents	65	3	28	19	15
Disruption of Electrical Transactions	28	-	16	9	7
Intrusion of Secrecy	17	-	4	3	10
Computer Fraud	555	8	88	206	253
Disruption of Electrical Records	11	-	-	5	6
Unlawful Access	171	17	31	27	96
Others	274	9	66	86	113

**Table 4 TRENDS OF DRUG-RELATED CRIMES**

	<b>Total</b>	<b>Narcotics Act</b>	<b>Marijuana Control Act</b>	<b>Psychotropic Medicine Control Act</b>
1989	3,876 (100)	657 (100)	1,025 (100)	1,994 (100)
1990	4,222 (109)	1,215 (185)	1,450 (141)	1,557 (78)
1991	3,133 (81)	838 (128)	1,138 (111)	1,157 (58)
1992	2,968 (77)	949 (144)	1,054 (103)	965 (48)
1993	6,773 (175)	3,364 (512)	1,509 (147)	1,900 (95)
1994	4,555 (118)	1,314 (200)	1,499 (146)	1,742 (87)
1995	5,418 (140)	1,135 (173)	1,516 (148)	2,767 (139)
1996	6,189 (160)	1,235 (188)	1,272 (124)	3,682 (185)
1997	6,947 (179)	1,201 (183)	1,301 (127)	4,445 (223)
1998	8,350 (215)	892 (136)	1,606 (157)	5,852 (293)

(Unit : Persons)