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# Strengthening Judicial Independence in Korea

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## **1. Introduction**

Article 10 of the Universal Declaration of Human Rights states "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Based on this, there are several UN standards on the independence of the judiciary, such as the Basic Principles on the Independence of the Judiciary adopted in 1985 and the Bangalore Principles of Judicial Conduct of 2002. The original notion of the UN Basic Principles derived from the idea that institutional independence meant that judicial systems had to be independent from the other branches of government, mainly of the executive and legislative branches. The purpose of this principles is function as guiding standards to assist Member States in securing and promoting the independence of the judiciary.

The Korean judiciary lived a tough life during the authoritarian regime for decades. After the June Democratic Struggle in 1987, the 9<sup>th</sup> amendment of the Constitution was introduced. The 10<sup>th</sup> Constitution strengthen civil rights. And the power of the president was reduced in favor of the National Assembly and the Judiciary. The Constitution declares the independence of courts in a definite manner. The Article 101 of the Constitution vested judicial power in courts composed of judges. Also, the article 103 stipulates that judges should rule independently according to their conscience in conformity with the Constitution and Act.

In this paper, the structure of the Korean judiciary and the current situation of the judicial independence in Korea will be explained. The efforts to strengthen judicial independence in Korea will be mentioned at the last part.

## **2. The Korean Judiciary**

There are six types of ordinary courts in Korea: The Supreme Court, High Courts (Appellate Court), District Courts, Patent Courts, Family Courts, and the Administrative Court. The Korean judicial system

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is based on the three-instance trial system, which is composed of district courts, high courts, and the Supreme Court. Other courts exercise specialized functions with the Patent Court positioned on the same level as the high courts and family courts and the administrative court positioned on the same level as district courts.

The Supreme Court is comprised of the Chief Justice and 13 Justices. The Minister of National Court Administration, one of the Justices, does not sit on the bench in the Supreme Court trials. The Chief Justice of the Supreme Court is appointed by the President with the consent of the National Assembly. The Supreme Court Justices are appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly. The term of office of the Chief Justice is six years and he/she shall not be reappointed. The term of office of the Justices is six years and they may be reappointed. The retirement age of the Chief Justice and Justices is 70.

There are five high courts located in five major cities of Korea. To enhance judicial accessibility of the litigants, selected high courts established one of its panels in remote district courts. High courts hear appeals from judgments, rulings or orders rendered either by a panel of three judges of district courts and the family courts or by the Administrative Court. There are 18 district courts and 2 family courts throughout the country.

Judges other than the Chief Justice and the Supreme Court Justices shall be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices. The term of office of judges of ordinary courts is ten years and they may be reappointed. The age limit of the judges is 65.

Before the reform of 2007, to be a lawyer in Korea, one should pass a state judicial exam and be trained at the Judicial Research and Training Institute for 2 years. All judges of the lower courts were appointed just after finishing the training program. In 2007 Korea adopted American styled law school system. Since then, all legal professionals are trained by 3-year law school system. Also, judges are appointed from among those persons who have served in any of the following offices for at least 5 years: (1) prosecutor, attorney-at-law, (2) person who is admitted to the bar and has been engaged in legal affairs at a government agency, local government, public organization or other corporations, (3) person who is qualified as an attorney-at-law and has been in the office higher than the assistant professor in jurisprudence at an authorized college or university. This work experience requirement will be extended to 7 years from the year 2025 and 10 years from the year 2028.

Goal of this reform was changing structure of ordinary courts as courts in the US legal system. This reform of courts includes abolishing advancement and promotion opportunities for Judges to become head of each High Court and District Court. Now, heads of each High Court and District

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Court (which are called as 'Chief Judge' of each court) are mainly elected among and by Judges in each court and appointed by the Chief Justice.

The Constitution of Korea separates an independent constitutional court and grants it exclusive jurisdiction over matters of constitutionality. The Constitutional Court consists of nine Justices. All justices are appointed by the President: among them three are nominated by the Chief Justice of the Supreme court and three selected by the National Assembly. The President of the Constitutional Court is appointed among Justices by the President with consent of the National Assembly. The Justices of Constitutional court serve for six-year terms and cannot be older than age 70. Justices except President of Constitutional Court can renew its term.

### **3. Judicial Independence in Korea**

#### **A. Judicial independence from other state powers**

Korea was under the authoritarian regime for decades. After the June Democratic Struggle in 1987, the current Constitution strengthened the independence of the judiciary. There is a good balance of power between the three branches of government.

No judge shall be removed from office except by impeachment or a sentence of imprisonment or heavier punishment, nor shall he/she be suspended from office, have his/her salary reduced or suffer any other unfavorable treatment except by disciplinary action. In the event a judge is unable to discharge his/her official duties because of serious mental or physical impairment, he/she may be retired from office under the conditions as prescribed by Act. (Article 106 of the Constitution)

The National Assembly may adopt a resolution on the institution of impeachment of a judge. Impeachment trial is under the jurisdiction of the Constitutional Court. If a request for an impeachment is well-grounded, the Constitutional Court shall pronounce a decision that the respondent shall be removed from the office. Impeachment of a judge is very rare and no judge has been impeached so far.

Parliamentary actions interfering the process and outcome of court cases are not allowed. (Article 8 of *the Act on the Inspection and Investigation of State Administration*) Expenses of courts shall be appropriated independently in the national budget. The autonomy and independence of the Judiciary Branch shall be respected in formulating the budget of the courts. (Article 82 of *the Court Organization Act*)

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## **B. Judicial independence from judicial administration**

The Chief Justice of the Supreme Court shall exercise a general control and supervision over the judicial administrative affairs. The Chief Justice may delegate part of his/her authority over the direction and supervision of judicial administrative affairs to the Minister of the National Court Administration, the heads of courts of various levels. (Article 9 of *the Court Organization Act*)

The Judge Disciplinary Committee is established in the Supreme Court. The Committee consists of one chairperson and six members. The chairperson of the Committee is appointed by the Chief Justice from among the Justices of the Supreme Court. Among six members three are judges, and one attorney-at-law, one law professor, one person with abundant learning and experience. (Article 4 and 5 of *the Discipline of Judges Act*)

As mentioned above, there is no promotion among judges. A big issue among judges is relocation and transfer. Since almost all judges want to live in big cities, especially in Seoul, it is inevitable to relocate judges regularly. There is a quite well-established rule and practice of relocation of judges. However, from time to time, judges complained about their relocation.

All courts have a judge's council which is comprised of all judges in the court. A judge's council is an advisory agency on the judicial administration. (Article 9-2 of *the Court Organization Act*) A judge's council plays a substantial role in court administration.

## **C. Judicial independence from social pressure**

Nowadays judges often become targets of organized campaigns when the matter being adjudicated involves political content. It becomes more complex when the litigant, whether an accused or a victim, has significant political followers. Attempts are made to influence the proceedings and the judges. It is judges' responsibility to confront these challenges. When social pressure was so severe, the court asked the police to protect judges. Fortunately, this happened rarely so far. Sometimes persons who made undue criticism or hate speech against judgments or judges were indicted for slander and libel.

Also, decisions of the courts often attract criticism from parties defeated or political parties or civil groups. It is not rare that judges face a civil or criminal lawsuit. However, Judicial immunity is strictly established by the case law of the Supreme Court.

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## **D. Judicial independence and freedom of expression**

Judges are constitutionally required to remain politically neutral. They are not allowed to take sides. The Ethics Committee of the Supreme Court drove this point home when it called on judges to exercise prudence on the use of the social networking services. The Ethics Committee said while the characteristics of social network services remain to be discussed, communicating through these channels as a judge should clearly fall under the public domain.

The Code of Judicial Ethics (No. 2021 of the Supreme Court Regulation) asks impartiality and integrity of judges. Judges' freedom of expression is fully guaranteed. However, if a judge violates the Code of Ethics, he/she may be disciplined.

## **4. Strengthening Judicial Independence**

In Korea, external independence of the judiciary is quite well established after the 1987 Democratic Struggle. While great attention was devoted to the standards of the external independence of the judiciary, the internal independence received less attention. However, in 2019, former Chief Justice Yang was arrested on charges of abusing his authority to interfere with trials as part of an unconstitutional collusion with the previous administration. This case is still pending.

After the arrest of former Chief Justice, internal independence became a crucial issue inside and outside of the judiciary. The Supreme Court reduced its own power on judicial administration of lower courts. Chief Judges of lower courts are selected by Judges of each court. Accordingly, the power of judge's council is increased.

With the increased attention and demand from the society for the judicial independence, the Supreme Court asks budgetary independence. However, National Assembly and the fiscal authorities are against the strong Judiciary with its own budgetary power. Nowadays, people's interest in the judiciary seems to be changing from judicial independence to judicial liability. It means that judicial independence in Korea has been strengthened significantly. Also, it means that judges feel much more pressure from public opinion than before.