Crime and Criminal Justice in the Republic of Korea

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Ministry of Justice

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Foreword

This booklet has been prepared to serve as a brief introduction to the subject of the present condition of crimes, preventive measures and the criminal justice in Korea.

Nowadays, due to rapid progress in the means of transportation and communication, and expanding international exchanges of people and material, the problem of crime has become a concern far beyond the sphere of each state. It is clear that the question of whether an act constitutes a crime, or how such an act shall be dealt with depends on the internal law of each government. It is, however, also clear that close international cooperation can help to resolve the crime problem of individual states. Such cooperation on the urgent crime problem must start from mutual understanding assisted by an exchange of information.

With this in mind, this booklet intends to offer some assistance for the exchange of such information bearing on the subject of crime.

For those whose needs will not be satisfied with the brief information in this booklet, more detailed information will be furnished by the authorities listed below.

Attn: The First Prosecution Section
Prosecution Bureau
Ministry of Justice
Republic of Korea

Recent Crime Conditions and Preventive Measures in Korea

(1) Surveying the trend of crimes for the past ten years in Korea, it is possible to see a generally decreasing phase of criminal occurrences, as shown in the following chart. In brief, overlooking slight exceptions, the number of crimes in 1974 decreased down to 81.5% compared with that of 1965.

This decreasing trend can be explained as the result of political stability, good progress in the economy and the effective exercise of preventive measures.

(2) Among the total number of the crimes, the number of the Penal Code Crimes is also on the decrease; the number in 1974 is 19.3% below that of 1965.

This general trend is also shown same in such major cases as murder, robbery and larceny.

Murder cases decreased to 79.4%, robbery cases to 89.6%, and larceny cases to 57.6% compared with 1965 as indicated in the same chart.

(3) Notwithstanding this decreasing trend, bodily harm offenses such as assault and violence cases increased to 145.6% in number (annual increase rate of about 4.5%) compared with that of 1965, and sexual crimes also considerably increased.

It is, however, to be noted that the annual increase rate of recent several years is obviously decreasing.

(4) This decreasing trend of crimes in Korea contrasts with some advanced countries where crimes are on an annual increase. Clearly this is due to the comparatively effective law enforcement in atmosphere of political stability during past ten years, and to the stability in standard of living in the successful course of economic development project.

Besides the above factors, it indicates that the effort of the government and the citizen, focused on the prevention and suppression of crimes, has been effective. The following are some of the countermeasures taken for that purpose as of now.

1. Above all, the best measure is to assure a criminal that he will be surely arrested after he commits a crime, by the maintenance of a high clearance rate and speedy trial. The clearance rate in Korea has been maintained at around 80% successively, and moreover, in cases of murder and

robbery incidents it reaches up to about 90% of all occurrences. The matter of speedy trial shall be explained next.

2. The second one is forming a joint authority of investigation or special task force. During the past, under the leadership and supervision of the prosecutor, there have been several joint authorities of investigation or special task forces against some specified crimes of social concern, all of which resulted in great success. For instance, these are "The Joint Authority of Investigation of Smuggling", and "The Special Task Force Against Narcotic Offenses". The former, formed of police and custom officers under the supervision of a prosecutor, succeeded in rooting out such smuggling as was being committed by the vessel exclusively used for that purpose, while the latter, organized body of police officers and narcotic inspectors under the leadership of prosecutors, succeeded in eliminating a number of narcotic addicts in Korea, and yet takes an active part in the struggle against drug abuses.

3. The third measure is the enactment and exercise of the aggravated punishment provisions. Whenever a certain crime was rampant, the government unhesitatingly used to provide and enforce special law providing aggravated punishment, by which such crime should be duly dealt with, as a countermeasure. For instance, as a countermeasure against organized "hoodlums", the government enacted and enforced "The Aggravated Violence Punishment Law". In consequence, we have succeeded in controlling the occurrences of violence offences committed by them. Other examples are "The Law for Providing Special Punishment for The Specified Offences Against Public Health" as a countermeasure against the offences which injure public health, and "The Law for Providing Special Punishment for Specified Crimes", against bribery of governmental officers or tax violations.

4. The fourth measure is voluntary cooperation of the citizen in the struggle against crimes. As a matter of fact, such cooperation has been accelerated by the continuous effort of police officers. As a typical expression of this

cooperation, we should mention their energetic and immediate report of crime to the investigating authorities whenever it occurs within their reach. Besides, we stress their voluntary participation in activities for the prevention of crimes. Citizens of each community provide financial support to maintain night watch squad, which performs as a substitute to fill the shortage in number of police officers as well as an effective aid in the struggle of prevention of crimes.

5. The last measure is the inspiration of law-abiding attitude along with "The Campaign for Law-abiding Attitude" and "The Saemaul (New Village) Movement".

These Movements intend to enlighten the attitude of all citizens into law-abiding life, and eventually contribute to prevent crimes. It should also be noted that gambling and illicit home brewery (or "moon-shine") has been eliminated in the country-side under the influence of "The Saemaul (New Village) Movement".

Criminal Trends for the Past 10 Years (From the Year of 1965 to 1974)

Offenses \ Year		1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Crimes Disposed by Public Prosecutor	number	628,874	672,271	651,333	604,844	619,509	518,543	522,498	600,953	530,287	512,738
	ratio	100%	106.9%	103.6%	96.2%	98.5%	82.5%	83.1%	143.3%	84.3%	81.5%
Penal Code Crime	number	351,862	337,781	321,184	306,668	269,467	253,787	258,239	297,931	286,820	283,808
	ratio	100%	96.0%	91.3%	87.2%	76.6%	72.0%	73.4%	84.7%	81.5%	80.7%
Homicide (Including Death resulting from Robbery, etc)	number	911	805	793	874	853	885	793	893	715	723
	ratio	100%	88.4%	87.0%	95.9%	93.6%	97.1%	87.0%	98.0%	78.5%	79.4%
Robbery	number	2,323	2,424	2,020	1,526	1,644	1,667	1,771	2,017	1,537	2,081
	ratio	100%	104.3%	87.0%	65.7%	70.8%	71.8%	76.2%	86.8%	66.2%	89.6%
Crimes Concerning Chastity (Including Rape)	number	2,646	3,151	3,628	3,847	3,960	4,528	4,905	5,608	5,614	5,505
	ratio	100%	119.1%	137.1%	145.4%	149.7%	171.1%	185.4%	211.9%	212.2%	208.1%
Larceny	number	120,308	94,062	86,620	76,574	61,289	56,014	56,669	69,838	64,909	69,340
	ratio	100%	78.2%	72.0%	63.6%	50.9%	46.6%	47.1%	58.0%	54.0%	57.6%
Violence (Including Assault and Aggravated Assault)	number	93,759	115,425	126,843	135,711	131,924	132,235	138,541	146,259	127,088	136,505
	ratio	100%	123.1%	135.3%	144.7%	140.7%	141.0%	147.8%	156.0%	135.5%	145.6%

Criminal Justice Administration

The criminal justice administration in Korea, as in most countries, begins with the investigation of crime by the police, proceeds with the prosecution of the prosecutor and adjudication of the court, and ends with correction and rehabilitation.

Therefore, it may be possible to explain the criminal justice administration with a general description with respect to the classification of these four stages. It should be also noted that the description to be attempted hereinafter is mainly relating to the typical criminal cases and excluding summary proceedings for the minor offenses such as the violations of the Road Traffic Law.

1. The Police

The police have two main functions – the prevention of crime and the detection of crime after it has been committed. Operationally these two are interrelated because efforts to prevent crime also lead to its detection, and effective detection of crime is itself an influence toward its prevention. Preventive measures include various activities such as patrol, target area saturation and campaign for the prevention of crime among the citizen.

The noteworthy fact is that the possession of fire arms by private person is illegal in principle, and hence the control of fire arms by the police greatly contributes to the prevention of crime.

The investigating officials are divided into two categories: the general judicial police officials and the special judicial police officials who exercise the functions of judicial police officials relating to forestry, railroads, monopoly, narcotics, and customs. These special judicial police officials exercise their function in the detection of specified crime with professional knowledge of their own field.

There are various judicial restrictions to the investigation of crime by the police, based on the constitutional provisions relating to the protection of human rights.

First of all, there should be a warrant of detention issued

by the court when the police intends to detain a suspect.

Usually the police submits to the public prosecutor the materials which establish a reasonable ground to suspect that the suspect has committed a certain crime and that he will flee or destroy the evidence unless he is detained.

In response to this application, the public prosecutor scrutinizes the above materials and when he believes it inappropriate, he directs the police to investigate the suspect undetained. When he agrees with the application, he submits the request to issue a warrant, with the above materials, to the court. The court has the discretion whether or not to issue a warrant. About 20% of the number of all suspects cleared by the investigating officers are detained according to these proceedings, and the rejection rate of issuing a warrant by either the public prosecutor or judge reaches to nearly 5% of the number of all applications by the police. In cases of search or seizure, it is also required to obtain a warrant issued in such a way as in the proceedings of detention.

As a matter of law, a police officer or any competent officer may arrest or detain without a warrant when the offense is committed in his presence, or under some other extraordinary circumstances.

The justification, however, is exceptional, and it is also required to obtain a warrant within a designated period-48 hours or 72 hours-after arrest or detention.

In case where judicial police officials arrest a suspect, the suspect shall be released if he is not transferred to the public prosecutor within 10 days. There is no exception to that principle, that the police officers must complete their investigation work within this period, and hence the unduly prolonged detention of a suspect is not legally possible.

In this stage of the proceedings, the suspect has right to prompt assistance of counsel and the counsel is under legal protection with the free and unfettered right to interview the suspect, and thus to enable him to prepare defenses for his client.

To be noted is the relationship between a public prosecutor and a judicial police official. In Korea, the public prosecutor has an authority to direct and supervise the judicial police

officials in his capacity with respect to criminal investigation. In other words, as far as it is concerned with criminal investigation, all dispositions and decisions made by the judicial police officials should coincide with the direction of the public prosecutor. As a matter of fact, it is true that the judicial police official exercises wide discretion. However, this exercise of discretion is supervised by the public prosecutor in such ways as following.

First of all, all cases should be transferred to public prosecutor and decided by him whether or not to be indicted. In brief, the criminal case can not be legally disposed of by the police officials.

Second of all, as mentioned above, it is required to apply the warrant to the public prosecutor, not to the court directly, in case where the police officials intend to arrest, search or seize. And the public prosecutor retains an authority to reject those applications of the police officials. In other words, it can be said that the police official should obtain a "grant" from the public prosecutor in their exercise of arrest, search or seizure. Moreover, if they intend to release the suspect after a warrant has been issued, it is required in advance to be granted by the public prosecutor. In some cases, the public prosecutor may give definite directions relating to the investigation of a certain case in such a way as setting schedules and methods, etc.

This supervision and direction of the public prosecutor over the police officials have not only the effect to prevent the possible abuse in exercise of police power, but also render the great contribution to the effective institution of prosecution by enabling the public prosecutor, who holds the position of plaintiff-prosecutor in trial proceedings, to participate in the investigation and hence prepare his case from the first stage of investigation.

2. The Prosecution

The prosecution is a body in which the competence to exercise prosecution is vested after the stage of the investigation of crime by the police. The prosecution in Korea consists of

about 400 public prosecutors, who are assigned to the 49 Public Prosecutor's Offices or Branch Offices, set up corresponding to the courts or branch of courts respectively, and carry out their official functions severally within the district of jurisdiction of their offices.

The public prosecutor is a very important governmental organ who plays a key role in the criminal justice administration in Korea. In brief, he directs all investigation: investigating crimes in his own capacity or directing and supervising the investigation of police officials, as mentioned above.

He exercises the discretion whether or not to institute prosecution: monopolization of prosecution and the exercise of discretionary prosecution. He holds the position of plaintiff-prosecutor in trial proceedings and even directs the execution of adjudication.

In this sense, it may be said that the public prosecutor plays a decisive role in all stages of criminal justice administration.

In view of this important responsibility, strict requirements for appointment apply to public prosecutors like judges.

To become a public prosecutor, one must pass the Judicial Examination and then complete 2-year-course at the Judicial Training Institute.

Since the Judicial Examination is one of the most difficult and authoritative exams in Korea, with a small passing rate – roughly a hundred to one – a brilliant future is assured for the successful passers and they are envied by all.

Those who are selected according to these requirements, begin their career as judges or public prosecutors and devote themselves as "elite" officials to legal profession.

As mentioned above, while the public prosecutor monopolizes the institution of prosecution, the decision whether or not to institute prosecution shall be made at his own discretion – that is, even if there is sufficient ground to suspect that a suspect has committed a crime, he still retains discretion not to institute prosecution with regards to the character, personal circumstances of the suspect, motives of the offense, or other various circumstances. It is called "the Principle of Discretionary Prosecution". In practice, for about 50% of the number of the suspects who are investigated by the public

prosecutor, the prosecutions are not instituted, and roughly 20% of the number of those not prosecuted, are in pursuance of "the Principle of Discretionary Prosecution". This discretion is due to be exercised reasonably because of the binding force of the established principles derived from the precedents as well as the provisions of the law.

As already explained in the last sub-chapter, while the police should transfer the case to the public prosecutor within 10 days in case where the suspect is detained, the public prosecutor should also decide whether or not to institute prosecution within 10 days (or prolonged 10 more days if granted by the court).

This restriction on the period of detention has been provided solely to protect human rights by preventing the possibility of unduly prolonged detention by the public prosecutor.

There are three kinds of disposition when the public prosecutor considers it necessary to impose penalty on the suspect.

The first one is the institution of prosecution according to trial proceedings.

The second one is the application for a summary order of the court imposing fine or minor fine.

The last one is the transfer of the suspect under 20 years old to the competent Juvenile Department of the Family Court or of District Court, according to the criminal proceeding under the Juvenile Act to impose protective measures.

Upon considering the related circumstances of the case, the public prosecutor decides which one he will follow.

Generally speaking, for about 30% of all cases in which the public prosecutor believes it necessary to impose penalty, he institutes prosecution according to the ordinary trial proceedings; about 60% are subjected to the application for summary order; and about 10% are transferred to the Juvenile Department for protective measures.

These figures have remained relatively steady in recent several years even though there have been a little rise and fall.

3. Adjudication

The competence to adjudicate is vested in the courts

which are composed of approximately 500 judges. In Korea, pursuant to the separation of powers, the courts are a branch of the government, independent of the Legislature and the Executive. The Constitution clearly provides that the judges shall be independent in rendering decisions and shall be bound only by the Constitution and the laws, and that the status of the judges shall be guaranteed.

The strict requirements for appointment as a judge are the same as those of a public prosecutor. The status of judges, however, is more strongly guaranteed than that of public prosecutors.

The structure of the court system in Korea is composed of three levels of courts: the Supreme Court, the High Courts, and the District Courts, or the Branches of the District Courts. The Supreme Court exercises primarily appellate jurisdiction and tries, as a court of last resort, appeals from judgments rendered by the High Courts or by the Appellate Division of the District Courts.

The High Courts and the Appellate Division of the District Courts have jurisdiction over appeals lodged against judgments rendered by the divisions of the District Courts, and by a single judge of the District Courts, or of the Branches of the District Courts, respectively. The District Courts or the Branches of the District Courts try all cases in the first instance except those coming under the original jurisdiction of other courts.

In the District Courts, or in the Branches of the District Courts, the cases are allocated to a single judge or to a division-collegiate body of three judges-in accordance with the gravity of the offense.

The High Courts or Appellate Division of the District Courts use the collegiate body system.

The Supreme Court exercises appellate jurisdiction only over cases where questions of law are at issue, in principle and sits either in divisions consisting of 4 Justices, or en banc, according to the nature of the case.

In general, a judge begins his career as a judge of the District Courts or of the Branches of the District Courts, and then is promoted to a position of judge of the High

Courts or, finally, to be a Justice of the Supreme Court after years of experience and service. A certain period of service is required to become a judge of the High Courts or a Justice of the Supreme Court.

The Court, as mentioned above, intervenes in the investigation of the public prosecutor or the police, by reviewing the necessity of the compulsory measures in investigation and then issuing warrants during the investigation stage.

This is the expression of the solicitude of the law, concentrated on the protection of the human rights in behalf of an accused.

However, the key role of the court in the criminal justice administration is the adjudication. The court determines whether the defendant is guilty or not and then decides the penalty to be imposed on the defendant by the sentence. According to the Korean criminal procedure, a finding of guilt and sentencing are made at the same time without taking different procedures, and only by the judge.

The principal procedural features of a criminal trial are following.

First of all, there is a presumption of innocence of the defendant. This presumption conflicts with the commonsense judgement that most persons who passed through the police and prosecution screening are probably guilty. Since the investigation and the proceedings followed thereafter involve the exercise of the coercive powers of the government, it is desirable and fair for the government to justify the exercise of those powers. Therefore, its practical effect is to require the public prosecutor, representing the government, to prove the guilt of the defendant.

Second of all, the requirement of proof must be to the degree that the judge can be fully convinced about the guilt of the defendant. It is a legal expression of the maxim, **"in dubio pro reo"** (or doubts are resolved in favor of the defendant) and this is a significant means of preventing guilt judgments without adequate factual basis. It is to be noted that there are complicated provisions on evidence relating to that requirement, to protect the interests of the defendant from the possibility of unfair fact-finding. The rule of exclusion of

hearsay evidence is an example of those provisions.

Thirdly, there is the privilege of the defendant to be silent. This privilege was adopted under the influence of Anglo-American law. However, in pratice, few defendants exercise this privilege. Rather they usually waive this privilege and positively plead for their innocence, because they consider it more favorable for them to challenge the charges filed by the prosecution by means of positive statements.

The trial follows primarily the form of an adversary system in Anglo-American law, with some elements of the inquisitorial system still remaining.

In that sense, it is a kind of mixture of the adversary system in Anglo-American law, and the inquisitorial system in civil law. While the principle exists that the examination of a witness and the presentation of evidences are led by the parties - the public prosecutor or the defendant, the discretionary selection of the evidences, and the examination of a witness led by the judge in his capacity, prevail widely in practice.

To be noted, relating to the adjudication of the court, are some measures to assure the speedy trial. The right to a speedy trial is constitutionally guaranteed for the protection of rights of the defendant. On the other hand, the guarantee of the speedy trial relates to the prevention of crime, for a speedy trial assures the prompt imposing of a penalty on an offender and effectuates one of the purposes of criminal penalty – a deterrence to others who may be inclined to similarly violate the law.

The Code of Criminal Procedure provides the release of the detained defendant as a rule, unless adjudicated within 2 months from the day of detention; provided that under extraordinary circumstances, the court may extend the period of the detention up to a limit of 6 months.

Moreover, when a case is not adjudicated in 15 years after the institution of prosecution, the prescriptive period against prosecution shall be regarded to have run, and there must be a judgment of acquittal on procedural grounds.

On February, 1973, "The Law for Providing Special Measures relating to Criminal Procedure" was enacted to prevent the delay of trial.

According to the law, the trial in the first instance must be completed in 6 months after the institution of prosecution and the appeal proceedings of upper courts must not exceed the period of 4 months after appeal. While these requirements are not as mandatory as to produce procedural effects, such as acquittal or dismissal, the court should submit the statement of reason for delay to the Chief Justice through the chief judge of the respective courts in case where the court does not comply with those requirements, and hence the law intends to encourage the speedy trial through this indirect but effective means. As a matter of law, the cases of detained defendants are adjudicated within 6 months, otherwise the defendants are released; therefore, trials are usually speedy. However, in cases where defendants are not detained, or released on bail or on suspension of execution of detention, trials were likely delayed, and this was the primary reason to enact a special law.

However, a speedy trial can be fully assured by an increase in the number of judges, increase of auxiliary officers, the expansion of court facilities including courtrooms, or other measures, in addition to above mentioned legal requirements.

As a result of such efforts, as well as by compliance with the legal requirements already mentioned, trials, nowadays, are completed more expeditiously.

4. Correction

The persons who are sentenced penal servitude or imprisonment by the adjudication shall be committed to the Correctional Institution and subjected to the measures of correction.

The details of the correctional administration are presented in the other booklet, which is distributed together with this.

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