A Study on the Structural Reform of the Korean Public Prosecutor's Office with a view to Lifting International Competitiveness

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I. Introduction

Although the Republic of Korea has recovered from the ruins of the 1950's Korean War and achieved a remarkable economic growth during the past 40 years, it is now, at the threshold of 21st century, faced with the great national economic crises which led us to receive the IMF's rescue fund.

To make a long story short, I presume the cause of the economic tragedy mainly originated from the fact that the frame and habitude of our way of life were not so changed suitably as to accommodate the new era of unbounded international competition.

Accordingly, our aim of the survival strategy should concentrate wholly on building international competitive power. It is also necessary for us to reexamine thoroughly the present system and traditional practice in all the fields of our way of thinking, politics, economy, society, culture, education, environment, and other areas whether they are a viable and good enough to win the fierce international competition in the age of "Segewha", meaning globalization.

The new government, together with employers and employees, in the course of struggling to overcome economic difficulties, expedite the overall reform of our national administration. Intending to meet the needs of our times, I have tried not only to diagnose the organization of public prosecutor's office which is an important one of Administration's organs, but also to propose a structural reform plan so it can cope in an era of unlimited competition.

In this paper, on the one hand I evaluated the actual conditions of the functions of the public prosecutor's office which is too heavily workloaded, and then analysed the structure of its work process which shows high-cost and low-efficiency, and on the other hand I reviewed, referring to the advanced foreign country's criminal justice system, the framework and mechanisms such as the city or county public prosecutor's office, assistant public prosecutors, acting public prosecutors, with which have often been discussed in vain, in order to promote the international competitive power.

II. The Actual Situation of the Prosecution's Function and the Comparison of Competitiveness with Japan

1. The Actual Situation of the Prosecution's Function

The prosecution has the basic duties of both establishing the rule of law and defending social stability by investigating and prosecuting the criminal suspects and punishing offenders in accordance with the weight of his or her offences. In addition to mentioned duties, as an office of guaranteeing human rights, the prosecution has the responsibility of ensuring human rights by observing and supervising the persons concerned lest their human rights should be infringed in the criminal proceedings.

Therefore, as a representative of the public interest, a public prosecutor has the authority and duties such as: ① Matters necessary for investigation of crimes, institution and maintenance of prosecution; ② Direction and supervision of the police

and other investigative agencies concerning investigation of crimes; ③ Submission of request to the court for appropriate application of laws and regulations; ④ Direction and supervision of the execution of criminal judgement; ⑤ Institution, pursuit, direction and supervision of civil lawsuits and administrative litigations in which the government is a party or intervener.

As of the end of year 1997, the prosecution, 7,644 investigative personnel including 1,087 public prosecutors of the nationwide 58 public prosecutor's offices, receiving trust from the people, not only have disposed of 2,110,436 criminal suspects through investigation with swiftness, fairness, and kindness, but also have strived faithfully to fulfill the times's calling which is the prevention of corruption in the capitalistic economy system and the maintenance of social and economic order. But the real situation of the prosecution's function is not operating enough well to provide satisfactorily good criminal justice services with the people and to meet the needs of the times because the prosecution is too much troubled by the enormous workload which means that for a month, per public prosecutor is investigating and disposing of 162 criminal suspects, in far excess of a reasonable caseload of about 50 suspects per month.

2. The Comparison of Competitiveness with Japan Concerning the Disposition of Criminal Cases

The current serious situation of the Korean prosecution which have been distressed by the too heavy workload can be easily proven if compared with Japan of which the prosecution system is similar to ours.

Taking the year 1995 as a base year, the number of offenders disposed of by the prosecution was 1,930,000 in Korea and 2,460,000 in Japan or Korea's 1.3 times in Japan; there were 1,060 public prosecutors in Korea and 1,173 in Japan or Korea's 1.1 times of the number in Korea; prosecutors in Korea had a caseload 2.8 times the size of the counterpart in Japan, at 152 offenders per prosecutor in Korea compared

to 54 per prosecutor in Japan; The rate of unexecuted pecuniary punishment in Korea was 33.1% or 2.7 times of the rate in Japan and 12.0% in Japan; the rate of acquittal judgement at first instance courts was 0.61% in Korea or 6.7 times the rate in Japan of 0.09%. Almost all of above figures generally reveal the characteristics of high-cost and low-efficiency of which the competitiveness of Korean public prosecutors' function is about one-third of that of Japan's.

Table 1. Comparison of Competitive Power with Japan Concerning the Disposition of Criminal Cases (1995). (Unit: persons)

Section	Population	The number of offenders disposed of by the prosecution	The number of public prosecutors	The number of offenders disposed of by per public prosecutor for per month	The rate of unexecuted pecuniary punishment	The rate of acquittal judge-ment at first instance courts
Korea	44,600,000	1.930,000	1,060	152	33.1%	0.61%
Japan	125,100,000	2,460,000	1,173	54	12.0%	0.09%
Comparison	Korea's 2.8 times	Korea's 1.3 times	Korea's 1.1 times	Japan's 2.8 times	Japan's 2.7 times	Japan's 6.7 times

Ⅲ. Analysis of the Cause of High-Cost and Low-Efficiency Structure

Analysis shows how the Korean prosecution has been sustained in a state of high-cost and low-efficiency structure. The several causes are as follows.

1. Less Increasing Number of Public Prosecutors than the Multiplying Trend of Criminal Cases

It seems that the level of fewer increasing number of public prosecutors than the

multiplication of criminal cases fundamentally aggravates the public prosecution's malfunction. Notwithstanding that the number of offenders disposed of was multiplied by 15 times during the past 45 years, from 139,972 in 1952 to 2,117,759 in 1997, the number of public prosecutors was raised by 7 times during the same period, from 163 in 1592 to 1,137 in 1997. As a result, the number of offenders disposed of by per public prosecutor for per month was sharply risen by twice or more from 71 in 1952 to 163 in 1997.

2. The Excessive Composition Rate of Complaint in Total Criminal Cases

The composition rate of complaint with respect to the total number of criminal cases in Korea came up to 34%, which surpassed Japan's rate of 3.1% by 11 times. The average yearly increasing rate of complaint amounted to 10.2%, which went beyond 6.5% of the total criminal cases' increasing rate in the last decade from 1986 to 1995. To make matters worse, 65.5% of complaints were composed of intellectual crimes such as fraud, embezzlement, breach of trust, and forgery and counterfeiting. Thus, the excessive composition rate of complaint in total criminal cases constitutes principal factors of the prosecution's overwhelming workload, because the prosecution has to spend especially a lot of time and efforts in disposing of the criminal cases which are usually complicated with conflicting interests and antagonistic relationships between parties concerned, intricate knotty facts, restrictions of case handling process by law, and so forth.

3. The Poverty of Strategic Countermeasures in the Criminal Policy Aspect

From 1952 to 1997, during those forty-five years, Korea has both adopted uniquealternative measures of increasing simply the number of public prosecutors and relevant organizations as a criminal policy strategy to deal with the abrupt multiplication of criminal cases and various changes in criminal actions and also, has held

Table 2. Receipt of Complaint Cases in Korea and Japan Respectively (1995).

(Unit : persons)

Section	Total population	Total receipt of cases	The number of complaint cases	Percentage of complaint cases	The number of complaint cases per 100,000 people
Korea	44,600,000	1,386,174	471,702	34.0%	1,057
Japan	125,100,000	338,254	10,596	3.1%	9

* The number of violators of the Special Act on Disposition of Traffic Accidents and of the Road Traffic Act was excluded.

fast to the unitary case handling system. This means all the criminal cases are disposed of or finalized by no other person than public prosecutors without discriminating the gravity of the offense. Owing to the unitary case handling system, the number of offenders disposed of by per public prosecutor for per month was doubled from 58 to 163 in spite of the 7 fold increase in public prosecutors over the same period. There have been no drastic alternative policies which would reduce the criminal case itself or the workload of public prosecutors. As a necessary consequence, the criminal case handling process of high-cost and low- efficiency structure continues to survive.

On the other hand, since the end of World War II, Japan has established the dual case handling system which means, the opposite concept of the unitary case handling system, that allotting the prosecution's role between public prosecutors and other eligible officials called by assistant public prosecutors or vice public prosecutors and acting public prosecutors, who have disposed of or finalized petty offenses corresponding 70% of the total criminal cases. The remaining 30% of the total criminal cases, which was felony offenses, have been disposed of directly by public prosecutors. By handling prosecution's business in this way, Japan has succeeded in reducing the number of offenders disposed of by per public prosecutor for per month

from 192 in 1962 to 54 in 1995. Additionaly, by pushing forward actively the decriminalization policy, Japan also has successfully decreased the number of crimes occurring from an astronomical high of 8,120,000 in 1962 to 2,460,000 in 1995.

4. Insufficient Reform Resolution in a State Managerial Level

Just at the point of entering the 21st century, today's social structures and crime situations in comparison with those under the newly formed criminal justice system in 1950's have changed drastically. In proportion as the amount of the public prosecutors' task has already exceeded the limit of their capabilities, the people's dissatisfaction arising from the unreasonable prosecution's system has brought forth distrust of the prosecution and the government. In spite of those ever-changing circumstances, the fundamental reform was not performed completely, I'd like to point out certain reasons, because whenever a system reform was propelled, the aim of the reform was not placed on protecting rights, interests, and benefits of the people who paid taxes, but both on the public prosecutors-centered elitism which means all of the criminal cases without classifying offenses into misdemeanor and felonies have to be finalized or disposed of by no other person than public prosecutors and on the collective egoism meaning that they prefer to live in a comfortable current system promoting their own organization's prestige and maintaining their status. Eventually, for want of the invincible reform will serving the people as master in a state managerial level, the reform of the prosecution's system deserved to fail.

IV. A Reform Plan for the System and Organization of the Prosecution

Since I regard 'the government as an enterprise running by taxes of the people', the high-cost and low-efficiency structure of the prosecution ought to be renovated

towards strengthening competitive power in conformity to market economic principles.

If a company increases many directors or managers to deal with a task which could be done easily by the chief of a section or any member of staff in the company, it surely could not survive the competition of the world. The same principle is applicable to the prosecution. If public prosecutors, a public prosecutor with the honor suitable to Grade Ⅲ official or more, continue to maintain the high-cost and low-efficiency system which disposes of all criminal cases instead of entrusting insignificant criminal cases to staff of the public prosecutors' offices who are Grade Ⅳ prosecution administrative and investigation officers or Grade Ⅴ prosecution administrative and investigation officers experienced in plenty of investigation, I believe, the people paying taxes could never be persuaded by the abnormal structure.

1. Import of Assistant (or vice) Public Prosecutor System and Enforcement of Acting Public Prosecutor System

The first reform plan is to import and enforce both the assistant public prosecutor and acting public prosecutor systems which are effectively working in the developed countries such as America, England, Germany, and Japan. We have to resolutely convert the present unitary case handling system to the dual role-allotting case handling system. Important crimes, like felonies, would be handled by public prosecutors and trifling crimes, like misdemeanors, would be handled by assistant public prosecutors and acting public prosecutors. I propose that the system of acting public prosecutor, substituting Grade Ⅳ prosecution administrative and investigation officers or Grade Ⅴ prosecution administrative and investigation officers for public prosecutors, which is specified in the current Public Prosecutor's Office Act, be enforced without amendment in the year 1999, and assistant public prosecutors system be imported and enforced in the year 2001 after arranging matters connected this system including necessary amendments of related laws while freezing the legally prescribed number of public prosecutors at the year 2000 level and year by year,

increasing the number of assistant public prosecutors and acting public prosecutors until the former becomes 300 and the latter 400 in the year 2005.

Table 3. An Outlook for Investigative Personnel's Frame and its Workload.

(Unit: persons)

Section \ Year	1999	2000	2001	2002	2003	2004	2005
Total criminal cases	2,348,190	2,472,644	2,603,694	2,741,689	2,886,999	3,040,010	3,201,130
Legally prescribed number of public prosecutors	1,207 (+70)	1,287 (+80)	1,287	1,287	1,287	1,287	1,287
The number of assistant public prosecutors			100 (+100)	150 (+50)	200 (+50)	250 (+50)	300 (+50)
The number of acting public prosecutors	100 (+100)	150 (+50)	200 (+50)	250 (+50)	300 (+50)	350 (+50)	400 (+50)
The number of offenders disposed of by public prosecutors for per month	141 (-22)	131 (-10)	110 (-21)	100 (-10)	90 (-10)	80 (-10)	71 (-9)

※ Preconditions are as follows;

① The increase rate of criminal cases will average 5.3% for per year.

② 150 public prosecutors will be increased by the year 2000. Since then, frozen.

③ 400 acting public prosecutors will be secured from the year 1999 to 2005.

④ 300 assistant public prosecutors will be increased from the year 2001 to 2005.

⑤ Per assistant public prosecutor and acting public prosecutor will be capable of disposing of or finalizing 250 offenders for per month.

If we restructure the organization of the investigative personnel by transforming the current system into the dual role-allotting case handling system, public prosecutors could get out of heavy workloads. Assistant public prosecutors and acting public prosecutors will dispose of or finalize 2,100,000 offenders, corresponding 66% of the

total offenders which will amount to 3,200,000 and public prosecutors will take charge of the rest 34%, which will be 1,100,000. The number of offenders who will be disposed of by per public prosecutor for per month will be reduced to 71 offenders.

Table 4. Prospects for the Number of Offenders who will be Disposed of by Public Prosecutors, Assistant and Acting Public Prosecutors Respectively.

(Unit : persons)

Section \ Year	1999	2000	2001	2002	2003	2004	2005
Total criminal cases	2,348,190	2,472,644	2,603,694	2,741,689	2,886,999	3,040,010	3,201,130
The number of offenders disposed of by public prosecutors	2,048,190 (87.2%)	2,112,644 (81.8%)	1,703,694 (65.5%)	1,541,689 (56.2%)	1,386,999 (48.0%)	1,240,000 (40.8%)	1,101,130 (34.4%)
The number of offenders disposed of by assistant public prosecutors			300,000 (11.5%)	450,000 (16.4%)	600,000 (20.8%)	750,000 (24.7%)	900,000 (28.1%)
The number of offenders disposed of by acting public prosecutors	300,000 (12.85%)	450,000 (18.2%)	600,000 (23.0%)	750,000 (27.4%)	900,000 (31.2%)	1,050,000 (34.5%)	1,200,000 (37.5%)

2. Founding Local (City or County) Public Prosecutor's Office and Import of Summary Procedure System

The second reform plan is to establish local (city or county) public prosecutor's offices in correspondence to the nationwide 104 city or county courts which are already founded, and to import summary proceedings in which a criminal case will be handled swiftly with petty offenses, like road traffic offenses, without going through the formal proceedings. I consider this system to be a proper devise dissolving the people's inconvenience.

Rather than public prosecutors, assistant and acting public prosecutors had better be permanently stationed at the local public prosecutors' offices handling trivial crimes. Moreover, we have to further the people's benefit and to lessen the burden of the prosecution as well by importing the summary proceedings or tripartite settlement in single day system taken effect in Japan where a criminal case is concluded just for one day in the same office building through cooperation among the police, the prosecution, and the court.

3. Enlargement of the Scope for the System of Disposition by Notification

The third reform plan is to enlarge the scope of applying the system of disposition by notification to the typical violators of the administrative laws and regulations, in addition to keeping basically the increasing trend of criminal case occurrence under control by carrying out decisively the policy of decriminalization.

The system of disposition by notification, which are provided in some Acts such as the Road Traffic Act and Minor Offenses Act etc., means that in certain areas of administrative law, an executive agency may impose a fixed fine by serving a written notification on violators of administrative laws or regulations. If the fine paid within a designated period, the violator is exempted from formal criminal proceedings, if not, the violator is accused and tried in accordance with the ordinary criminal procedures.

The system of disposition by notification has some merits. For an offender, he or she could be freed fast and easily from the pressure of legal restraint without becoming an ex-convict by simply paying the fine. For law enforcement offices such as the police, the prosecution, and the court, with the imposition and collection of a fine, they are able to not only retrieve the invaded interest of law, while obtaining the effect of suppression of recurrence, but also be relieved from the overweighted workload by leaving out the formal criminal procedure. Because of these several merits, similar to this system is already put in enforce broadly in the developed countries like Japan, Germany, and so on.

Now it is high time that we should desperately break from the conventional unitary case handling system, in which we have to go through a series of complicated formalities about the typical violators of the administrative laws and regulations, for example, from starting the accusation of administrative agency, the investigation and demand of summary order for a fine by public prosecutors, summary order imposing a fine and its notification by the court, and to the end of collection of the fine, by both decriminalizing and enlarging the applicable scope of disposition by notification, which will be beneficial to all the parties concerned, namely, the court, the prosecution, administrative authorities, and the people related the offense.

4. Transfer of Jurisdiction Over Cases of Minor Offenses Act to the Prosecution

The fourth reform plan is to transfer the jurisdiction over cases of Minor Offenses Act to the prosecution. Because the current summary justice system regarding the Minor Offenses Act runs counter to the guarantee of the people's fundamental rights, it should be improved and integrated into the comprehensive summary procedure system, which has to be in charge of the prosecution.

Even though summary judgment is tried by a judge on demand of the chief of a police station with the object of lessening the burden of defendants through speedy procedure, there are many problems in the system. It is such an exception to the public prosecutor's sole right of deciding whether or not to prosecute a suspect, which is one of dominant principles of the Criminal Procedure Act that some suspects are unfairly punished, though some of them are innocent in fact or should not be in court because they deserve the suspension of prosecution. The proper exercise of state's punishment authorities and consistency of law enforcement are highly deemed to be hindered because the scope of discretionary power of the chief of a police station is obscure, for example, some cases punishable by a fine are returned to the summary justice court by the chief of a police station at random. This summary justice system

does not hardly exist in foreign countries but only remains in Korea as a remnant under the rule of Japanese imperialism.

When the summary judgment cases are increasing over one million annually since 1994, the summary justice system, under which one can be subject to not more the 30 days detention restraining the people's personal liberty, are going on without any participation of public prosecutors as a representative of public interest, and needs seriously reappraisal from the standpoint of strengthening the people's human rights.

Naturally, it is very desirable that the jurisdiction over cases of Minor Offenses Act be transferred to the prosecution, and all the criminal cases be disposed by the prosecution, if the prosecution import both the vice (or assistant) public prosecutor system and the dual case handling system.

V. Conclusion

I reviewed until now the expensive, inefficient structure of the Korean public prosecutors' organizations and system. It is burdend with an immense caseload 3 times or greater to that of Japan's similar system. In spite of exorbitant increase of criminal cases and radical change of criminal situations since the establishment of the Korean government, for fifty years, the Korean prosecution did not free itself from the unswerving unitary criminal policy of public prosecutors-centered increase of personnel and organizations. Therefore, I strongly proposed the reform plans, which are as follows, for the prosecution's organizations and system in order to promote the international competitiveness. ① Import of vice (or assistant) public prosecutor system, enforcement of acting public prosecutor system, and switchover of the unitary case handling system to the dual role-allotting case handling system. ② Found local (city or county) public prosecutor's office and import of summary procedure system. ③ Enlarge the scope for the system of disposition by notification applicable to the violators of administrative laws and regulations. ④ Transfer of jurisdiction over cases

of Minor Offenses Act to the prosecution.

If these reform plans will be performed, I'm sure, the following results.

First, public prosecutors could be released from the burdensome caseload, deal with more important criminal case with concentration such as irregularities and corruption crimes and economic offenses, and complete the needs of the times faithfully, which is the prevention of corruption and maintenance of social and economic order in the capitalistic economic system.

Second, since public prosecutors would escape from bulky criminal cases, they could render great services to guaranteeing the people's human rights by directing and supervising substantially the police and other investigative agencies concerning investigation of crimes in order for them to observe the related laws and regulations so that there is no victims mistreated.

Third, by securing the necessary number of assistant public prosecutors and acting public prosecutors instead of increasing the number of public prosecutors, the workload of the prosecution will be epoch-makingly reduced, and by simplifying the process of disposition of criminal cases, the prosecution's structure of the high-cost and low-efficiency will be improved and turned into strengthening the power of international competition curtailing 69 billions Won (approximately US $ 50.8 millions) of state's budget together with effective distribution and utilization of high quality human resources throughout the nation.

Fourthly, under the present circumstances, for the workload is so vast for public prosecutor's office that they can not but treat the case-related people ill-manneredly. Whenever the case-related people strongly want to state their case in detail, public prosecutors or prosecution administrative and investigation officers simply respond by saying to them, "I'm very busy right now, and there is no time, please just answer me in short what I asked you." But if the reform plans that I suggested are put in practice, the prosecution will be born again as the people's trusting prosecution serving the people with good justice, sufficient investigations, rapidly, fairly, and kindly.