

Korea's Experiment in Jury Criminal Trials

Professor In Sup Han discusses the recent adoption of jury trials in criminal trials and what it might mean for Korean judicial reform.

By Cynthia Yoo

At the CKR seminar series on February 25, 2009, Professor In Sup Han at the School of Law at Seoul National University described the “first year experiment” of jury criminal trials in South Korea.

Professor Han is an advocate of reform to the Korean judicial system. Sitting on numerous government and academic committees, he supported Korea's recent adoption of jury trials in criminal cases. He argued that Korea's lack of lay participation in its criminal justice system is unusual and is in the minority of the world's judicial systems.



And with the introduction of jury trials, Professor Han agreed that “democratic justification of the judiciary [would] be strengthened, its transparency promoted and the judiciary [could] be trusted and respected by the people.” This was part of a broader set of reforms including: law school system (to begin in 2009), sentencing guidelines, and revision of the Criminal Procedure Code to strengthen due process and trial examination.

In their deliberations, Korean legal professionals and legislators came up with a particularly “Korean Model” which combined aspects of a jury model (U.S.) and a mixed court model (Germany). The number of ‘lay participants’ for each trial ranges from five to nine, depending on the severity of the alleged crime and on confession.

The verdict on guilt is decided by the lay participants without the participation of the presiding judges. The verdict must be unanimous. Otherwise, a verdict can be reached by majority vote only after the citizens hear the opinion of the presiding judges. The lay participants would then present their opinions on verdict and sentencing to the presiding judge. Thus, the verdict of the lay participants is not binding on the court.

The experiences of the first year of the new system showed that judges have developed confidence in the lay participants. Professor Han cited as example, a case of a defendant accused of murder of his mother and who was acquitted at trial. It was the first case of acquittal at a lay participation trial and it was significant in that the lay participants rejected the prosecutorial evidence, deciding that the prosecutors failed to prove beyond ‘the reasonable doubt.’

In his reasons, the chief judge approved of the lay participants' work: “The reasonable questions of the jury was in line with the point of the judges and thus was greatly helpful.

Also the female jurors in their fifties, were particularly helpful for understanding the psychological aspects of the victim similar in age.”



The judiciary’s confidence in lay participants, Professor Han said, were shown time and time again in the some 60 cases that involved jurors. His studies showed that judges and legal professionals develop more confidence in the capacity of lay citizens as the “jury experiment” continued.

Professor Han believes this experiment is laying the groundwork for a much-needed sense of civil justice in the Korean judicial system. As an example, he cited a recent jury case that overturned a Supreme Court precedent. In Korean law, if a victim is injured in the process of a larceny, then that crime is elevated to robbery with bodily injury and the accused if found guilty, is automatically given a seven year sentence.

The jury acquitted the accused in this case, because they believed the sentence to be ‘unfair,’ disproportionate to the criminal act. Professor Han thought this was a remarkable development; it showed how a sense of civil justice might lead to reforms of criminal law. This, he argued, showed the possibilities for democratization of Korea’s justice system.

Many in Korea believe that jury trials may act as a catalyst for reforming the entire criminal justice system. The Korean justice system has a grim history of supporting authoritarian regimes and there is little trust between judicial officials and citizens.

Professor Han stated that continued expansion of jury trials may go a long way to reform the judiciary, increase transparency of criminal procedure and develop public confidence in the justice system.