South Korea:
Public Prosecution Reform

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SUMMARY

The passage of legislation in 2020 led to a more cooperative relationship between public prosecutors and the police during the investigation of crimes. Under the new law, prosecutors do not have command over police officers; however, prosecutors may request the police to further investigate or reinvestigate in certain specified situations. Prosecutors command their own investigative teams when they investigate a case. However, opportunities to investigate a case by themselves were reduced by the 2020 legislation and by further legislation passed in 2022.

The confidentiality of investigations into corruption is not specified in the laws. However, prosecutors and police officers have a general obligation to maintain confidentiality while on duty. In addition, the Corruption Investigation Office for High-Ranking Officials’ Case Affairs Rules have a provision to protect a suspect’s privacy.

I. Background

Before the recent reform of the prosecution system, the relationship between Korean prosecutors and the police was “in an order-obeyance relationship,” which some Korean scholars compared to systems in France or Germany. Prosecutors, “as the leaders or main players of criminal investigation, control[led] and direct[ed] the police who [were] the assistants to the prosecutors.”

After “a series of corruption cases involving prosecutors” in 2016, including a case against former President Park Geun-hye, who was ousted, “demand for sweeping reform [was] stronger than ever” as of 2017, according to a news article. All the major presidential candidates, including the winner Moon Jae-in, promised to reform the prosecution. Police officers also raised “their voices for more power and independence from the prosecution in their investigative work.”

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2 Id.
4 Id.
II. 2020 Legislation

Former president Moon, who was elected to the office in 2017, pledged a drastic overhaul of the state prosecution. His administration planned to establish a new state entity to probe corruption cases of state prosecutors, judges, and other senior government officials. The administration intended that prosecutors’ “irregularities should be cracked down on by a third party, not by themselves.”5 Moon also said that “the new government should scale back the monopolistic authority held by the prosecution. He vowed to let the prosecution hand over its ordinary investigative rights to police.”6

As the Moon administration made efforts, the National Assembly passed the Act on the Establishment and Operation of the Corruption Investigation Office for High-Ranking Officials, which was promulgated on January 14, 2020, and took effect on July 15, 2020.7 The National Assembly also passed bills to amend the Criminal Procedure Act and the Prosecutor’s Office Act in January 20208 that took effect on January 1, 2021.9

A. Changes in the Relationship Between the Police and Public Prosecutors

The 2020 Criminal Procedure Act aimed to establish a cooperative relationship between prosecutors and senior judicial police officers.10 It states they “shall cooperate with each other with respect to investigations, and the institution and maintenance of prosecutions.”11 Prosecutors lost the right to direct police investigations. The provisions that stated police captains, superintendents, and lieutenants must “receive instructions from a prosecutor with regard to all investigations, while serving as senior judicial police officers”12 and that judicial police officers must “comply with a prosecutor’s instructions”13 were deleted. However, investigations carried out by officials of a government agency, such as the National Tax Service, are still under the direction of the prosecutors.14

5 What Moon Jae-in Pledged to do as President, Korea Herald (May 10, 2017), https://perma.cc/B3C7-RL4J.
6 Id.
10 This is the same as a superintendent under the Police Officers Act, Act No. 3606, Dec. 31, 1982, as amended by Act No. 17368, June 9, 2020, Addenda of Act No. 3606, Dec. 31, 1982, art. 6, https://perma.cc/B8W5-EFUH.
13 Id. art. 196, para. 3.
14 Criminal Procedure Act, as amended to 2020, art. 245-10.
The 2020 acts gave police more investigative authority. Though the prosecutors kept general investigation authority, the 2020 Prosecutors Office Act and a related presidential decree allowed prosecutors to launch investigations into only six categories of crimes: corruption, economy, public officials, elections, defense projects, and large-scale disasters. This does not mean the prosecution must initiate investigations by itself. The prosecution can refer these cases for investigation to police. In addition, they can initiate investigation into crimes committed by a police official. Prosecutors also investigate crimes directly related to these crimes. Further, the prosecution may carry out supplementary investigations after police investigations.

When the prosecutor and the senior judicial police officer investigate the same case, the prosecutor may demand that the senior judicial police officer transfer the case to him or her. When the police decide to prosecute a case and transfer it to a prosecutor, or when police request that a prosecutor submit a warrant application to a judge, the prosecutor may order the police to conduct further investigations in order to make the decision.

Where a prosecutor becomes aware of facts involving a suspected breach of law by an investigative authority that is led by a senior judicial police officer, he or she may demand that the senior judicial police officer transmit the case record to him or her. After examination of the record, the prosecutor may demand that the senior judicial police officer take corrective measures if deemed necessary.

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15 Id. art. 196.
18 Prosecutor’s Office Act, supra note 16, art. 4, para. 1, sub-para. 1(a); Decree on the Scope of the Crime for Which the Prosecutor Initiates an Investigation, Presidential Decree No. 31090, Oct. 7, 2020.
19 Id.
20 Prosecutor’s Office Act, as amended to 2020, art. 4, para. 1, sub-para. 1(d).
21 Senior judicial police officers are “police administrative officers, police superintendents, superintendents, police captains, or police lieutenants . . . .” Criminal Procedure Act, as amended to 2020, art. 197, para. 1.
22 Id. art. 197-4.
23 Id. art. 197-2.
24 Id. art. 197-3.
B. The Police’s New Authority to Close Probes of Cases

The 2020 Criminal Procedure Act enabled the police to close probes of cases without approval from the prosecution.\textsuperscript{25} In such event, a senior judicial police officer must notify the complainants, accusers, victims, or their legal representatives of the reasons for not transferring the case to the prosecutor.\textsuperscript{26} These notified persons may file an objection with the head of the police station to which the senior judicial police officer belongs. In such case, the officer must transfer the case to a competent prosecutor.\textsuperscript{27}

Even if no objection is filed, when a senior judicial police officer decides not to transfer a case to a competent prosecutor, the officer must still send the relevant documents and the article of evidence of the case to the prosecutor.\textsuperscript{28} When the prosecutor deems the closing of the case to be unlawful or unjust, the prosecutor may request the senior judicial police officer to re-investigate the case.\textsuperscript{29}

C. Corruption Cases Committed by High-ranking Officials

The Corruption Investigation Office for High-Ranking Officials (CIO), which was established in January 2021, based on the 2020 act for its establishment and operation,\textsuperscript{30} is an independent investigation agency that has investigative jurisdiction with regards to high-ranking officials, which include the president, governors, National Assembly members, judges, prosecutors, high-level police officers, and high-level government officials of specified agencies, and their respective family members.\textsuperscript{31}

Though prosecutors can initiate investigations of corruption cases committed by high-ranking officials, where the chief officer of the CIO requests them to refer their investigation to the CIO, prosecutors must comply with the request.\textsuperscript{32}

\textsuperscript{25} Id. art. 245-5, sub-para. 2.
\textsuperscript{26} Id. art. 245-6.
\textsuperscript{27} Id. art. 245-7.
\textsuperscript{28} Id. art. 245-5.
\textsuperscript{29} Id. art. 245-8.
\textsuperscript{30} Purpose and Basis, Corruption Investigation Office for High-Ranking Officials, https://perma.cc/M43T-V3ZG.
\textsuperscript{31} Act on the Establishment and Operation of the Corruption Investigation Office for High-Ranking Officials art. 2, sub-para. 1.
\textsuperscript{32} Id. art. 24.
III. 2022 Amendments

President Moon planned further changes of prosecutors’ authorities. The National Assembly passed a bill to amend the Prosecutor’s Office Act on April 30, 2022, and another bill to amend the Criminal Procedure Act on May 3, 2022. President Moon Jae-in signed these acts on May 3, 2022, near the end of his term.33

The 2022 amendments of the Prosecutors’ Office Act further reduced the crimes for which the prosecution may initiate investigations. Prosecutors may directly initiate investigations of corruption and economic crimes, and significant crimes prescribed by a presidential decree.34

The 2022 Criminal Procedure Act amendments reduced the prosecution’s authority to conduct supplemental investigations. It added a requirement for supplemental investigations, such that the investigation must be directly related to the case and limited in scope to the extent that supplemental investigations do not deviate from the essence of such case.35 However, the prosecution’s power to conduct investigations for cases transferred by the police for indictment is not subject to such restrictions. In addition, the prosecution can conduct further investigations in the following cases, though any supplementary investigation must not deviate from the essence of the case36:

- where the prosecutor requests a transfer of a case after determining that the judicial police officer in charge of the case has failed to take corrective measures requested by the prosecutor37;
- where an order to transfer the case to the Prosecutors’ Office is issued during the prosecution’s inspection of the arrest and detention location of the investigative agency under its jurisdiction38; and
- where a case is transferred to prosecution due to objections filed by the complainant.39

The restriction of the police’s authority to close the case was reduced. The 2022 Criminal Procedure Act removed the third-party accuser from persons who are able to file an objection to

36 Key Amendments to the Criminal Procedure Act & the Prosecutors’ Office Act, Shin & Kim (May 13, 2022), https://perma.cc/L5DZ-XHNS.
37 Criminal Procedure Act, as amended to 2022, art. 197-3.
38 Id. art. 198-2.
39 Id. art. 245-7.
the police officer’s decision. As a result, only the complainants, victims, or their representatives may file such an objection.40

IV. Prosecutorial Reform Under President Yoon (May 2022 - Present)

In May 2022, Yoon Suk Yeol became the president of South Korea. “He is a former public prosecutor who served as Prosecutor General from 2019 to 2021.”41 As a prosecutor, he was known for “his skill and success in tackling high-profile corruption cases.”42 In March 2021, “[p]rotesting the Moon Jae-in administration’s campaign to weaken the state prosecution service, Prosecutor General Yoon Seok-youl resigned.”43 After becoming president, Yoon and his administration have tried to give more authority to prosecutors.

The 2022 Prosecutor’s Office Act amendments listed only corruption and economic crimes as crimes for which prosecutors may initiate investigations. However, other significant crimes can be added by a presidential decree.44 These amendments expanded the concepts of corruption and economic crimes, and added other crimes by presidential decree. The other crimes are

1. Crimes that undermine the judicial order of the state, such as false accusations, escape, concealment of criminals, destruction of evidence, perjury, false appraisal and interpretation, crimes of reprisal, and crimes related to the duties of a jury; and
2. Crimes for which individual laws stipulate that state agencies report or request investigations to prosecutors.45

V. Public Prosecutors Command Their Own Investigative Teams

Each prosecutors’ office has investigation officers. They work under the direction of the prosecutors.46

40 Id.
41 Yoon Suk Yeol Profile, Office of the President, https://perma.cc/45CW-PDKT.
42 Id.
43 Myo-Ja Ser, Prosecutor General Says He’s Had Enough and Quits, JoongAng Daily (Mar. 4, 2021), https://perma.cc/P9J5-U6SF.
44 Prosecutor’s Office Act, as amended to 2022, art. 4, para. 1.
46 Prosecutor’s Office Act, as amended to 2022, art. 46.
VI. Confidentiality of Investigations into Corruption

There does not appear to be a specific provision that obligates investigators to keep investigations into corruption confidential. However, in general, public officials have a duty to maintain confidentiality. 47 The Investigation Rules for Special Judicial Police Officers prescribe confidentiality of investigations, though the relevant investigations do not involve corruption. The investigation rules state that investigators of government agencies, other than the police and the prosecutors’ office (special judicial police officers), must not divulge matters related to the investigation, must strictly observe confidentiality when investigating a crime, and must protect the privacy of the suspect and the persons involved in the case in all stages of the investigation, and strive not to damage their reputations or credit. 48

The Criminal Procedure Act has a provision that relates to confidentiality and privacy of suspects. It states “[e]ach prosecutor, judicial police officer . . . shall respect the human rights of each criminal suspect or any other person, keep the secret known to him or her in the course of investigation, and refrain from hindering the investigation.” 49 The Prosecutor’s Office Rules reiterates this by stating “public prosecutors and staff of public prosecutor’s office shall strictly observe secrets obtained in the course of an investigation . . . so as not to interfere with the investigation.” 50

The CIO Case Affairs Rules have a provision to protect a suspect’s privacy. It states that “[p]rosecutors and investigators protect the privacy of persons involved in the case, such as suspects, during the course of an investigation, and carry out their duties keeping in mind that honor and credibility are not damaged.” 51 The Regulations on Mutual Cooperation between Prosecutor and Judicial Police Officers and General Investigation Rules also have a provision that obligates prosecutors and judicial police officers to protect the privacy of the suspect and those involved in the case. 52

49 Criminal Procedure Act, as amended to 2022, art. 198, para. 2.