Comparison of the Legal System between North and South Korea (I) *

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1. Introduction

Although North Korea’s political, economic and social development since 1945 is known to us to a certain extent, legal development therein has been a neglected field of study. Good reasons can of course be found to explain the neglect of the legal system of the so-called Democratic People’s Republic of Korea (henceforth referred to as the DPRK), but no one will disagree that the situation should be changed.

In order to achieve our goal of the unification of the country under the guidance of the Republic of Korea, we must be in a position to evaluate the strength and weakness of the

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* This paper was originally presented at “the International Conference on the Problems of Korean Unification” held in Seoul, August 24-29, 1970. Some revisions and corrections have been made for the present publication. In writing this paper, I am indebted to Professors Jerome A. Cohen, Harold J. Berman and Lloyd L. Weinreb of Harvard Law School, who exerted a profound influence upon my intellectual growth.

North Korean system. Here law occupies a position of crucial importance, for, as Professor Harold J. Berman points out, a legal system expresses in a most vivid and real way what a society stands for.\(^1\) To be sure, law is an important touchstone for measuring the structure of any society,\(^2\) and its differing role in North Korea as compared with its role in the South points to basic societal differences between the two parts of the country which deserve detailed analysis. Also from a purely political viewpoint, the study of North Korean law at least becomes a matter of urgent need and practical importance. Without some understanding of North Korean legal system, we certainly cannot make any workable plan of taking over the northern part of the peninsula.

No one will argue that the twenty-five year long division of Korea has given rise to two different legal as well as political and economic systems on the Korean peninsula. Therefore, the unification of Korea means not only territorial integration, but above and beyond that, the integration of political, economic, social, cultural and legal systems. The aim of this paper is, however, limited in the sense that it is concerned only with the present situation of North Korea’s legal system. More specifically, this paper is purported to compare the legal system of North Korea, if any, with that of the Republic of Korea. Emphasis will be placed upon discovering what differences and similarities exist between the two legal systems. In addition to this, an effort will be further made, in this paper, to analyze and evaluate how the Communist system has been applied to North Korea through an examination of some important aspects of its legal structure. The legal structure is primarily considered in the light of Soviet and Chinese experiences in order to find out, on a comparative law basis, to what extent the institutional structure is affected by the two leading Communist countries, namely the U.S.S.R. and Red China. It must be pointed out, in this context, that whenever we want to analyze the present situation in North Korea, we should always bear in mind that North Korea today has been the scene of competition for dominant influence between its powerful neighbours.

Some Comments on Source Materials

In the course of preparing this paper, I have endeavored to rely principally on official documents, newspapers, periodicals and books published in North Korea. In order to verify the reliability and applicability of these materials, I have further attempted to check them

against other available sources. Unfortunately, the incessant changes in the North Korean experiment, the better scarcity of relevant data, and the inaccessibility of the northern part of the Korean peninsula for on-the-spot observation constitute the major obstacles confronting me as well as other scholars engaged in research on contemporary Korea.

Particularly, materials relevant to the law in North Korea are scarce, in comparison with those related to the political and economic systems of the Pyongyang regime. While a handful of statutory laws and codes, mainly published before the outbreak of the Korean War in 1950, are available in the Korean language, it is very doubtful whether the regime in Pyongyang usually publishes all the legislative acts. At the present juncture, it is even impossible to tell what kind of laws or codes, with the exception of the Constitution, the Law on Court Organization, the Penal Code and the Code of Criminal Procedure, have been drafted and promulgated in North Korea. Certainly, many of North Korea's operative legal norms are not published and are available only to those who administer the system. To make matters worse, the North Koreans do not seem to publish the decisions of their courts. I have not, so far, found any indication that there exists any systematic case report system in North Korea. As a result, all the judicial decisions and cases cited in this paper, the number of which by no means is large, were basically derived from the citations appearing in law review articles, treatises, and textbooks.

Thus, this paper is on the whole based upon a handful of obtainable laws and codes, relevant treatises, and available legal journals, insofar as the materials from North Korea are concerned. I hope that my findings, interpretations and conclusions, which are by no means definitive, may nevertheless stimulate future researches which would help amend any defects appearing in this paper.

II. Main Features of the Constitution of the DPRK

Upon the first glance, there appears no substantial difference, on the surface, between the Constitution of the ROK Republic of Korea and that of North Korea. Thus, the Constitution of the Democratic People's Republic of Korea (1) is apparently endowed with basic requirements which a basic modern democratic law is universally desired to have. It stipulates that the sovereignty of the state shall belong to the people, that the representative organs through

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which the people exercise power are the Supreme People's Assembly and the local people's assemblies at all levels,\(^{(2)}\) and that the representative organs of state power from the village people's assemblies to the Supreme People's Assembly are elected by the free will of the people.\(^{(3)}\) To keep state power under democratic principles separated in three branches - legislative, executive and judiciary-- the executive branch can stay in office only with the approval and confidence granted by the legislative body, while the independence of the judiciary is guaranteed.

However, reality pictures entirely different conditions in that the Workers' Party (synonymous with the Communist Party) reigns over everything with an absolute dictatorship in North Korea. Organs and agencies of the government were readily degraded as more advance vanguards that perform policies of the Workers' Party, whereas all other political parties and social organizations were under tight control of the Party, having been streamlined and strengthened to suit themselves for the survival of the Party.

The North Koreans have adopted a political system envisaged in the so-called people's democracy, in plausible embodiment of formalities, declaring that "the sovereignty shall be vested in the people and the exercise of the sovereign power of the state shall be conducted by the Supreme People's Assembly and by other people's assemblies at local level."\(^{(4)}\) The North Korean regime enacted and promulgated its Constitution on September 8, 1948, copying the version of the Soviet "Stalin Constitution" of 1936. The structures of government provided in its fundamental law rested the supreme sovereign power on "the Supreme People's Assembly," the legislative organ, flanked by the Cabinet (executive) and the Supreme Court (judiciary). Local municipalities are composed of people's assemblies (deliberative organs), people's committees (executive organs) and courts and procuracies (judicial organs) at various local levels (including province, city, county and village).\(^{(5)}\)

Supreme People's Assembly, the only sovereign and legislative organ of the regime, comprises delegates for a four-year term, elected on 1 out of 30,000 people ratio.\(^{(6)}\) Although the delegates of the Assembly are alleged to have been elected directly on the basis of universal, equal and direct suffrage by secret ballot,\(^{(7)}\) the election system that requires voters

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\(^{(2)}\) Art. 2.
\(^{(3)}\) Art. 3.
\(^{(4)}\) Art. 2.
\(^{(5)}\) See Const., Arts. 82-92.
\(^{(6)}\) Const., Arts. 35 and 36. Also see *Nodong Sinmun*, August 8, 1962.
\(^{(7)}\) Const., Art. 34.
to cast ballots either in white or in black ballot boxes in favour of, or against a single candidate in respective constituency in open publicity, has brought about ever-assured 100% participation in votings by all the eligible voters, setting unprecedented records in election history. 100% “yes” votes have been repeatedly secured, almost without exception.\(^{(8)}\) Needless to say, it is a matter of course that the candidates who are running for the office of the delegate of the Assembly as official nominees jointly endorsed by “the Democratic Front for Unification of Fatherland” engineered by the master “Korean Workers’ Party (KWP)” and are so elected without fail are the diehard crack elements of the Workers’ Party. This was eloquently proved by the late election held on October 8, 1962 for the third time since the formal establishment of the regime in 1948. Of total 383 delegates elected in that election, members of the Workers’ Party won 372 seats, representing overwhelming majority of 97% in the Assembly.\(^{(9)}\) The Assembly has one Chairman, two vice Chairmen and three sub-committees for foreign affairs, legislative and appropriation matters that function as preliminary deliberation organs for proposed bills.

During recess periods of the Supreme People’s Assembly, its standing committee exercises, by proxy, all the powers of the mother Assembly. This committee assumes, on a permanent basis, the Assembly’s function as the \textit{de facto} sovereign and legislative organ. The incumbent Chairman of the Committee is “Ch’oi Yong-gon,” known as the No. 2 man next to Kim Il-sung in North Korea. Ch’oi is “the Chief of the State” in legal formalities.

Major powers that are vested in the Supreme People’s Assembly include: enactment of and amendment to the Constitution, deliberation and authorization of state budgets and accounts, approval of economic plans, establishment of important national policies, legislation, organization and dismissal of the Cabinet, election of the Supreme Court, etc.\(^{(10)}\)

The Cabinet which is organized by the Supreme People’s Assembly as the supreme executive organ is the institution through which actions and decisions of the Supreme People’s Assembly are carried out.\(^{(11)}\)

The Cabinet is formed with a Prime Minister, Vice Premiers, Cabinet Ministers and Committee Chairmen. In sheer copy of the principles of the Soviet centralization apparatus, the Cabinet consists of one Prime Minister, one First Vice Premier, seven Vice Premiers, five

\(^{(8)}\) \textit{Nodong Sinmun}, October 10, 1962. Also Chungang T’ongsin (Korean Central News Agency) of the same date.

\(^{(9)}\) \textit{Id.}, and also October 22, 1962.

\(^{(10)}\) Const., Art. 37.

\(^{(11)}\) Const., Art. 6 to 8.
Committee Chairmen and twenty-two Ministers. And over-all direction of and supervision over respective ministries, committees and other government agencies which are under direct jurisdiction of the Cabinet. The structures of the executive branch are vertical in a pyramidal type in that each ministry directs. And supervises central and local administrative organs respectively for the affairs for which it is ultimately responsible. (12) Besides, the Cabinet may repeal administrative directions and instructions that are found to be in conflict with the Constitution and laws, while local administrations must obey pertaining ministries in taking actions on administrative matters, and be absolutely responsible to the Cabinet for decisions and actions taken by them. (13)

At this point it would be worthwhile to look into the political career of Kim Ilsong, which may tell a bit about the presence of one-man-dictatorship in North Korea. First, he was appointed as Chairman of "the North Korean Provisional People's Committee" (from Feb. 9, 1946 to Feb. 17, 1947) and shifted over to Chairmanship of "the North Korean People's Committee" (from Feb. 17, 1947 to Sept. 9, 1948). After that, Kim was made the first Premier of the regime on September 9, 1948 and has continuously retained the premiership for the fourth successive term up to now by way of the 1957, 1962, and 1967 general election. Besides this, he has been concurrently serving the chairmanship of the Military Committee in the government. On the side of the KWP, he is virtually holding every job of great importance: He is the Secretary General of the Party as well as a member of its Standing Committee, Political Committee and Central Committee. This career of him is ample evidence to point out the acknowledged fact that Kim has been politically unrivaled in North Korea.

Powers of the Cabinet embrace: general conduct and direction of foreign policies, conclusion of international treaties, augmentation of tax levy and revenue collection, management of overseas trade, organization of currency and credit system, maintenance of social order, establishment of measures for promotion of people's living, direction of and supervision over organization of the People's Armed Forces, etc. (14)

The judicial organ is separated into two parts: one being the trial setup with the top Supreme Court down to other lower courts at various local levels (including province, city

(12) Art. 55.
(13) Id.
(14) Id., Sec. 1.
and county) and the other prosecution institution with the top Supreme Procuracy and other lower procuratorial offices.\(^{(15)}\)

“Judges shall be independent and subject only to the law in exercising judicial authority,” says the Constitution.\(^{(16)}\) The President of the Supreme Court and Procurator-General of the Supreme Procuracy are elected at the Supreme People’s Assembly.\(^{(17)}\)

Now let us take a brief look at the system of municipalities in North Korea. Local administrative districts are partitioned on the basis of province (including special municipalities directly under the central authority), city, county and village (ri). At each level of the administrative districts there are “local people’s assemblies” that act as local legislative bodies, along with local courts and procuratorial offices corresponding to each local levels.\(^{(18)}\) “Local people’s committees” that function as administrative organs at localities are organized by direct popular votes and are endorsed by local people’s assemblies. All these institutions take the form of self-government in their formality.\(^{(19)}\) Since the method of electing members of the local “people’s committees” is exactly the same as that of the Supreme People’s Assembly, the ingredient of local assemblies is none other than the enthusiastic elements of the KWP as seen in members of the Supreme Assembly. Furthermore, the chairmen of local people’s committees, top echelon of administration at local levels, are, in fact, appointed by their superior administrative authorities rather than elected by the people.

A word of caution, therefore, is needed to point out that what we have reviewed above, is all written in laws prescribing the ruling system of North Koreans, but is not what exists in reality. Nor can we overlook the argument that the Constitution of North Korea is not the Supreme law of the land for a state to follow as we prefer to understand, but serves as a more decorative and window-dressing propaganda purposes under a cloak of people’s democracy. For example, the second chapter of the Constitution deals literally with an absolute guarantee of fundamental rights of the people even without reservation clauses, painting them as sacred and inviolable. The so-called great postulate for construction of Communism, and programs, regulations and policies of the KWP, however, condition the people’s rights to see to it that they are secured within a boundary permissible for those

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\(^{(15)}\) Const., Arts. 82–99
\(^{(16)}\) Art. 88.
\(^{(17)}\) Art. 92.
\(^{(18)}\) Art. 68.
\(^{(19)}\) Arts. 68. to 81.
restrictions. In other words, in order to carry out policies put up by the party, the people are forcibly herded in the so-called Ch’ollima (Flying Horse) Movement being deprived of freedoms of occupation, of movement of residence, of press, of assembly and even freedom of life. As a consequence, one who approaches the study of the DPRK Constitution as well as other fields of law in North Korea today with the western legal mind finds great contradictions and great paradoxes. This is primarily because in North Korea the law is not necessarily a link between theory and practice. And some of the terminology of the DPRK Constitution may be similar to those used in a free society, but their meaning is quite different.

Particular attention should be paid to persecution of religious missionaries, Catholic fathers and other clergymen, notwithstanding the clear legal provision to guarantee freedom of religion. Temples of Buddhism, one of the major religions in Korea, are looted and used by high echelon of the KWP as its recreation places. Conveniences and comforts of the Party have readily disregarded constitutional provisions providing for a four-year term for the Supreme People’s Assembly and prolonged the term on every occasion. Economic plans that must be debated and approved by the Supreme People’s Assembly prior to their execution are often put on the Assembly’s agenda only after their execution by the Cabinet has been completed. Records show that the first Five-Year Plan covering the period between 1957 to 1961 was approved in 1958 by the Assembly, while the current Seven Year Program already actuated from 1961 was not referred until 1963 to the legislative body by the Cabinet for its approval. Though it may sound sarcastic, the situation is that the Supreme People’s Assembly, empowered to consider the state budget bill and to endorse state accounts according to laws, was not given any time for an advance deliberation of the bills. Instead, it has set records of practising ex post facto approvals. Such practices are numerous in North Korea. The possibility arises here, therefore, that a formal ruling system in North Korea can be substantially metamorphosed into a dictatorship of the Korean Workers’ Party.


(21) Art. 21 of the Constitution guarantee freedom of worship.

(22) Const., Art. 36. Election of the Supreme People’s Assembly were held four times in North Korea in 1948, 1957, 1962, and 1967.
III. Machinery of Justice

Soviet influence is again predominant in the structure of the three major institution of the judicial system of the DPRK—courts, procuracies and bar—and also in the connected field of state notary. The DPRK Constitution sets the stage with the traditional declaration in Article 88 that Judges are independent and subject only to the law in exercising judicial authority. Evidently this article contains almost the similar legal terminology as revealed in Article 98 of the ROK Constitution. What is more significant in the North Korean approach to the judiciary, however, does not consist in legal terminology but in attitude. Thus, all state officials, including those serving in the judicial system, should be obliged to be militant in their espousal of policies established by the Workers' Party.

1. The People's Courts

Unlike the Law on Court Organization of the ROK, the Law of the DPRK specifically sets forth the task of the courts. Thus the task of the courts in North Korea is to try criminal and civil cases and to punish criminal and settle civil disputes, in order to protect the following from all kinds of infringement: (1) the "democratic people's state system" established in the DPRK; (2) political, labor, housing and other personal or property rights and interests of citizens guaranteed by laws and decrees; (3) rights and lawful interests of state institution, enterprises, cooperatives, and other social organizations. In addition, the courts are directed to secure the exact and undeviating execution of laws and decrees of the state by all institutions, organization, officials and citizens. In applying measures of punishment, courts are expected not only to chastise criminals but also to correct and reeducate them. Further, by all its activities courts are supposed to educate citizens in the spirit of loyalty to their Motherland, of a protective attitude toward state property, of faithfulness to state and social duty and of respect for the democratic social order.

The court system established by the Law on Court Organization, is composed of the Supreme Court, Provincial Courts, District (city-county) People's Courts and Special Courts.

(1) Law on Court Organization of the DPRK, Arts. 3 and 6
(2) Id., Art. 4.
(3) Id., Art. 5.
JUDICIAL STRUCTURE OF COMMUNIST KOREA

Supreme People’s Assembly
   Standing Committee

Supreme Procuracy
   Supreme Court
   Cabinet
       Other Ministries
       Ministry of Justice

Provincial Procuracies
   Provincial Courts
       Provincial People’s Assemblies
       Provincial People’s Committee

Special Procuracies
   Special Courts

District Procuracies
   District People’s Courts
       County People’s Assemblies
       County People’s Committee

* Abolished on August 31, 1959.
** Abolished on March 13, 1950.

2. People’s Assessors

Whereas the ROK’s judiciary is solely composed of professional judges, the most contrasting feature of North Korean system is that at each trial two of the three judges for there is no one-judge court but only three-judge court existing in North Korea are laymen. The two lay co-judges, called people’s assessors, are to serve for a certain number of days, namely two weeks, annually. According to North Korean Communists, Participation of “people’s assessors” in judicial work is manifestation of the “mass line” or “mass viewpoint” policy of the KWP. The assessor system had been instituted by the Communists already before the promulgation of the Law on Court Organization in 1950. It was legally regulated in 1948 by the Constitution and in 1950 by the Law on Court Organization with a strong resemblance to the system of people’s assessors in the USSR.

Article 84 of the Constitution provides that the first trial is conducted with the participation of the people’s assessors who have equal rights with judges. Article 17 of the Organization
Law further states that consideration of cases shall be conducted by a court composed of a judge and two people's assessors as a principle.

3. Selection of Judicial Personnel

While all the ROK's judges are appointed, the North Koreans have the system of "election" of professional judges, as well as of the assessors. Under the Law on Courts Organization of the DPRK, presidents and judges of district courts are elected for terms of two years by the city or county people's assembly where the court is located. Presidents and judges of provincial courts are elected for terms of three years by the pertinent province people's assembly.

The president and judges of the Supreme Court are elected for terms of five years by the Supreme People's Assembly. In contrast with the foregoing, presidents and judges of special courts are appointed by the President of the Supreme Court.

To meet the demand for judicial cadres to run the "people's courts" in North Korea,
the communist authorities have recruited the "active" elements form among the workers, peasants, intellectuals and veterans of people's army. In the elections of the judges held in 1949, 56% were classed as workers, 27% as poor peasants and most of the remainder as office workers. At the present time, they do not seem to require neither in law nor in practice legal education even of the full time judge in their people's court: They think legally trained minds inflexible. The overriding considerations have been the individual's political reliability and correct "class stand" rather than legal training and educational background. As a result, the quality of judicial personnel in North Korea is inevitably low.

4. Independence of Judges from What?

With regard to the independence of judges, it has already been shown that the North Korean Constitution uses almost the same legal terminology as the ROK's Constitution. To be sure, the members of North Korean judiciary have, at least in theory, the right to try cases without having judgements dictated to them. Whereas the Law of the Communist China for the Organization of People's Courts does not specify the term of office an ordinary judge, the North Korean Organization Law legally establishes the term of office of judges at all levels. Further, the DPRK Constitution itself (Article 83) states that judges as well as people's assessors are removed only by means of recall of the organs which elected them, that is, the people's assemble sat corresponding levels (emphasis added). When rendering a judgment, the members of the court are supposed to evaluate evidence according to their own conviction based on the examination of the given case. They are also given the equal vote in deciding all the factual and legal issues involved in a case and all the questions of importance arising in the course of decision are to be resolved by a simple majority vote. If a judge is opposed to the opinion of the majority of the court, he is entitled to set forth a special dissenting opinion in writing and to attach it to the judgment of the court.

The practice in North Korea, however, shows that contrary to the theory and law, the

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(9) See the Law of the People's Republic of China for the Organization of People's Courts.

(10) While the judges of the people's district courts and Province courts are elected for terms of two and three years, respectively, the judges of the Supreme Court are elected for terms of five years. See Articles 25, 30, and 47 of the Court Organization Law.

(11) In addition to this, the Court Organization Law provides that judges shall report to voters on their work (Article 24).


(13) *Id.*, Arts. 226-227.
judges are not independent. First of all, the procedure of election and, consequently of recall is controlled by the North Korean system of nomination; the candidacy for each judge-
ship is limited to a single person, usually chosen on the basis of his political qualifications. This means that actually the Workers’ Party decides on both the election and the recall. Since the Constitution as well as the Organization Law does not provide specifically on what grounds a judge may be recalled, the organs which elected the judge, that is, the people’s assemblies at corresponding levels which is under direct control of the Party, need not be bothered to find any technical or legal reason to remove the judge. As a result, they may recall the judge on any ground even before expiration of their terms of office. Thus, a glance at the above table concerning the change of the Presidents of the DPRK Supreme Court

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Kim Il-son</td>
<td>Sep. 9, 1948</td>
</tr>
<tr>
<td>2. Cho Song-mo</td>
<td>Mar. 11, 1955</td>
</tr>
<tr>
<td>3. Hwang Se-hwan</td>
<td>Mar. 13, 1956</td>
</tr>
<tr>
<td>4. Kim Ha-un</td>
<td>Sep. 20, 1957</td>
</tr>
<tr>
<td>8. Yi Kuk-chin</td>
<td>Sep. 30, 1966</td>
</tr>
</tbody>
</table>

may well testify to the fact how easily a North Korean judge may be recalled from his office even before his term is up. Although the legal term of office of the Supreme Court President is five years, so far there has never been a President, with the exception of Kim Il-son who served from September 9, 1948 to March 10, 1955, who was not subject to recall (or dismissal, or voluntary resignation, whatever it may be called) before the expiration of his term. (See the above table.)

Moreover, one must have in mind that, especially since the Flying Horse Movement, virtually all judges are Party members and therefore subject to Party disciplinary actions as well as to those applicable to government personnel. More significantly, in view of the growing emphasis on the Party leadership over all governmental agencies since then, the question arises whether there are not pressures on North Korean judges to decide cases
according to the will of particular Party officials or of the Party leadership. There are certain indications of direct Party pressure on judges in particular cases, but it will be more reasonable to think that such pressure could be exerted more indirectly than directly, and more covertly than overtly. This is primarily because the KWP officially, if not in practice, inveighs against the direct involvement of the Party in non-Party matters and thus urges the Party organizations to concentrate all their efforts on Party work.\(^{(13)}\) In addition to this, one must have in mind that there has been evidence that the North Korean judiciary does not like to be controlled from outside.\(^{(14)}\)

Although the Party itself does not appear, so far, to have expressly advocated direct interference by Party organizations in the trial or decision of particular cases, the leadership or supremacy of the Party over the judiciary has been strongly emphasized, especially since the epoch-making Kim Il-song’s speech concerning the judicial policy of the Party in April 1958.\(^{(14a)}\) At that time, Kim Il-song himself had denounced the Western principles of judicial independence and separation of law from politics as revisionistic and incompatible with the principle of proletarian dictatorship, which the DPRK is pursuing to accomplish. Most of the legal writings appearing since then have supported the argument that being an instrument of the state and the proletarian dictatorship, the people’s court and judge must accept the leadership and judicial policy of the KWP, as do other state organs.

Whether or not the Party frequently interferes in particular cases,\(^{(15)}\) there is no doubt that it exerts a very strong influence on the course of judicial decisions by its frequent mass movements or campaigns against various kinds of illegal activity. During such movement or campaign, the judges have been urged to impose more severe punishments for offenders. The legal periodicals and press also play an influential part in the administration of people’s justice. They sometimes vividly indicate what kind of shortcomings are committed by unexperienced personnel of courts and procuracies. They sometimes suggest to the judicial cadres which direction should be taken in implementing the policies of the Party and state. They sometimes

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\(^{(14)}\) See *Id.*, 172.


\(^{(15)}\) In this connection, it is interesting to note that the CPSU has condemned interference by Party Organizations in the decision of particular cases. For the details of the independence of the Soviet judiciary, see Donald D. Barry and Harold J. Berman, "The Soviet Legal Profession," *Harvard Law Review*, Vol. 2, No. 1 (November 1968), at 22–24.
vigorously criticize specific judicial personnel as having rejected the leadership and guiding role of the Party in the system of the people's justice.

5. The Procuracy

One of the most important and powerful agencies of North Korea's totalitarian system is the procuracy, which is vested with supreme supervisory power to ensure the strict enforcement of law. That is, it exercises an overall supervisory authority over the "precise and honest" observance and execution of law throughout the country. Just like its Soviet and Chinese counterpart, the North Korean procuracy is in practice "indissolubly associated with the directing organs of the Communist Party," (16) to which it is responsible. The Constitution of the DPRK thus makes the procuracy entirely "independent in the discharge of their duties without being subject to the local organs of state power" (Article 94). The Procurator-General is appointed, rather than elected, by the Supreme People's Assembly, and he, in turn, appoints procurator in the provinces, cities, and counties.

When compared with the ROK's procuracy, the functions of North Korean procuracy differ in that it has not only the so-called supervisory authority over all the government organs but also the right to participate in civil cases involving public interests.

First of all, the procurators exercise supervisory authority over all the ministries, institutions and organizations subordinate to them, local organs of state power, social organizations, government officials, and citizens at large, to ensure the observance of the law. Thus, procurators keep watch over the entire system of administration, to see that executive and administrative bodies do not abuse their legal authority. (17)

If they find any decisions, orders, directives of the organs of state power to be illegal, they have the right to protest their illegality and demand their abolition. Although having no direct authority to annul, modify, or suspend the decisions protested, they can ask the governmental organs involved to answer their demands or protests. Likewise, they also can ask the government officials or citizens to explain in the written or oral form about illegal acts they have committed.

Further, they have the right to receive copies of orders and regulations issued by any agencies or organizations so that they may examine the legality of them. In case they find

any illegal orders or regulations to have infringed upon legal interests of any other institutions, organizations, officials, and citizens, they can take measures to restore those legal interests.

When a procurator detects what he believes to be an official departure from legality, he may seek redress by initiating administrative, disciplinary, or criminal proceedings as may appear to be suitable to the circumstances, and, if necessary, may initiate civil suits to compensate for material damage resulting from a trespass of the law.\(^{18}\)

6. The Role of the Bar

Since the DPRK is said to be an orthodox Communist state following the Marxist-Leninist principle in every aspect of its people’s life, one may well wonder whether it has any sort of legal profession there. For there will be no need of lawyers, insofar as the Korean Communists believe that the law and the state will ultimately wither away. In North Korea today, nevertheless, there do exist “people’s lawyers” who participate in the administration of justice. Their number, however, seems to be quite small and their role in the judicial process is significantly limited. The practicing lawyers called Pyonhosa in Korean, exact translation of which will be “attorneys at law” or “advocates” occupy a peculiar position in connection with those of procurators and judges. They are essentially considered as judicial workers.

The organizations and activities of the people’s lawyers are governed by the “Statute on the Attorney at Law” adopted by the North Korean Provisional People’s Committee on February 7, 1947. This statute is the sole source so far found with regard to the system of people’s lawyers in North Korea.\(^{19}\) Article 1 of the Statute prescribes three major functions that a people’s lawyer is supposed to generally perform. First, he defends the interests of the accused or other interested parties in litigation by means of making objectively justifiable legal arguments in the course of judicial proceeding. Secondly, he gives legal assistance to government agencies, state and private enterprises, social organizations and the people as a whole and acts as a representative for them in asserting their legal rights to judicial or other organs. Thirdly, upon the requests of the people, he assists the people in giving legal advice


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in a written or oral form.

According to the theory of Korean Communists, the defense counsel is not an agent of the accused in a criminal proceeding. He is an independent party in the trial and is not dictated by the request of the defendant. He must carry out his tasks to help the court to reach correct judgement and under no circumstance should he distort facts, fabricate evidence, or deceive the court in order to help his client. If the evidence presented by the prosecution is inadequate, in whole or in part, to support accusation, lawyer should conduct his own investigation or defense proceeding with a view to proving the innocence of the accused or mitigate his guilt. If, on the other hand, the crime has been substantially proved, then the counsel may defend the accused from the standpoint of mitigating circumstances, such as the motives and means of the crime, the age of the defendant, the degree of repentance, the objective purpose of the crime, etc.

Briefly speaking, people's lawyers in North Korea are considered as public officer of the judiciary rather than individual practitioners. They all work in the offices of the so-called lawyer's association and these offices distribute the legal work among the attorneys. To these offices, citizens, governmental agencies, state enterprises and other social organizations are supposed to come for assistance of varying kinds.

In connection with this, it should be motioned that, although legal developments in North Korea between 1953-1956 were directed toward relative liberalization, this trend was nevertheless brutally reversed by the Party leadership on the occasion of Kim Il-sung's speech of April 29, 1958. Since then, many lawyers were denounced for having advocated bourgeois concept of humanitarian law and considered themselves as men of selected profession. Among other things, members of the bar associations have been told to analyze the cases from the viewpoint of mass line, submit strictly to the Party leadership and control, and place their activities in undeviating accordance with the policies and decisions of the Party. Until and unless the Pyongyang regime swings back into a liberal trend, the roles of defense attorneys will remain to be limited by the rigid attitude of the Korean Communists as revealed in some important legal writings published in the Minju Sabop (The Democratic Administration of Justice), the official organ of the DPRK judiciary.

The thesis advanced by these writings is almost comparable to the views of the Chinese Communists regarding the function of lawyers: In the first place, the people’s lawyers in North Korea should be essentially “lawyers for the Party.” They must struggle for the interests of the Party and the revolution. They should put his duty to the state above his duty to the defendant in criminal action. It would be thus “irrational” for a lawyer to be permitted to keep professional secrets revealed by the defendant. To be sure, it is the duty of the people’s lawyer to suade the accused to confess his guilt and not to deceive the people’s court.\(^{(23)}\) In case of his refusal to do so, the people’s lawyer must influence and encourage him to reveal his secrets.\(^{(24)}\) Thus, one of the above writings boldly states the role of the legal profession as follows:

Fundamental missions of attorneys at law in our country are: to find the substantial (objective) truth of the case under trial, cooperate with the court in order to secure fair solution of the case, protect the interests of state and people from every kind of criminals and illegal acts, and realize the policy of our Party.

More importantly, whenever one sacrosanct duty of a lawyer to help the court to find the substantial truth in the course of trial contradicts another goal of the legal profession, for example, the protection of the defendant’s legal interests and rights, the decisive criterion for the solution of such contradiction is the policy and will of the KWP.\(^{(25)}\)

Such being the current official trend, one can easily conceive the difficult situation in which the defense attorneys find themselves in North Korea. Not only is the lawyer’s professional responsibility substantially qualified in criminal proceedings, but also his subtle relationship with the accused renders the system of legal defense almost ineffective. Other contributing factors are the socialization of property ownershhip (reducing areas of civil suits) and less emphasis put upon the formality of legal process. These several factors may well account for the recent trend to have people’s lawyers more engaged in educational and propaganda work

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\(^{(23)}\) See Lee Kyong-O, *Id.*, at 21 and 23.

\(^{(24)}\) *Id.*, at 23.

\(^{(25)}\) *Id.*, at 21.

\(^{(26)}\) Pak Man-yon, *supra* note 22, at 38.

than in law suits. Thus the people's lawyers are now called "propagandists of law" as well as experts of law, and come to have the honorable political task of interpreting and propagandizing the policies of the Party and the government to the masses.\(^\text{26}\) To be sure, this is not to say that, as in the case of the Communist China lawyers seldom appear in trial in North Korea today.\(^\text{27}\) Undoubtedly, they do appear in trial but nevertheless their role is, in a sense, very limited, mostly because they are urged to defend the interests of the state and the Party rather than the interests of their clients, whenever both interests are in conflict each other.\(^\text{28}\) To put it shortly, in North Korea today there exist a certain number of lawyers engaged in the practice of law and they are still functioning both as defense counsel in criminal cases and as legal representative of their clients in civil cases. But the realm of their legal activities is significantly limited and the effectiveness of their role as lawyer is questionable from the Western viewpoint. For example, even though it is not unusual for defense counsel to appear in public trials, they rarely seem to ask for acquittal of the defendant on legal grounds but only argue for conviction of lesser crime or for mitigation by reason of extenuating circumstances.

\(^{28}\) With regard to the tension between the Soviet advocate's duty to his client and his duty to society, Professors Barry and Berman point out that on the whole the weight of Soviet opinion leans more heavily toward the advocate's duty to society than does the weight of American opinion on this question, yet the terms of argument are about the same in both countries. Barry and Berman, "Soviet Legal Profession," \textit{supra} note 15. at 15