



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

KGV/ 236 /2015

Reference: The Joint Communication from Special Procedures (AL KOR 1/2015)

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and, in response to the latter's note verbale dated 12 February 2015, has the honor to submit, as attached, the Republic of Korea's response to the joint communication from special procedures.

The Permanent Mission of the Republic of Korea to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurance of its highest consideration.

Encl.: as stated

Geneva, 9 September 2015



Special Procedures Branch(c/o Natacha Foucard)
Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva 10

**Response of the Government of the Republic of Korea to the allegation letter from the
Special Rapporteur on the situation of human rights defenders and the Special
Rapporteur on the independence of judges and lawyers**

Ref: AL KOR 1/2015

1. The Government of the Republic of Korea hereby responds to the joint allegation letter requesting the information and observation of the Government from the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

Facts concerning the disciplinary proceedings brought against Mr. Kyeong-wook Jang and Ms. In-sook Kim

2. The Chief Prosecutor of the Seoul Central District Prosecutors' Office submitted applications for the commencement of disciplinary action against Mr. Kyeong-wook Jang and Ms. In-sook Kim on the grounds that they have actively hindered the interest of justice that is pursuit of the substantive truth. The applications were submitted in accordance with the provision of the *Attorney-at-law Act* which reads, "[T]he chief public prosecutor of a district public prosecutors' office shall, when he/she finds any attorney-at-law falling under the disciplinary action under Article 91 while conducting prosecutory affairs, such as criminal investigation, file an application for the commencement of a disciplinary action against such attorney-at-law."
3. Ms. Lee, the defendant who was represented by Mr. Kyeong-wook Jang, was prosecuted under detention on 2 July 2012. Two days later, Mr. Kyeong-wook Jang submitted an Appointment of Representative to the court and commenced his legal representation of the defendant.
4. Although Ms. Lee admitted all charges made against her during the investigation procedure by the prosecutor, she later denied all counts made against her in the first trial hearing on 17 July 2012 after she appointed Mr. Kyeong-wook Jang as her legal representative. Ms. Lee disagreed upon all of the evidence that the prosecutor submitted, alleging that she was just an ordinary North Korean defector but the National Intelligence Service had inflicted torture and other cruel acts on her in order to fabricate details of the case.
5. However, during the later course of the trial, the defendant wrote a letter to the Director of the National Intelligence Service, where she stated that although she

wanted to admit all charges made against her, she eventually denied all accusations made against her because Mr. Kyeong-wook Jang had persuaded her to deny all charges. She also expressed in the letter that she no longer wished to be represented by Mr. Kyeong-wook Jang.

6. The letter mentioned above was submitted to the court and later chosen as evidence by the court. The court acknowledged that the letter was written voluntarily and shall be given credibility.
7. As stated above, Mr. Kyeong-wook Jang was found in trial to actively persuade Ms. Lee, who had already admitted charges made against her, to make a false statement, which exceeds the extent of simply exercising the right to remain silent. Ms. Lee was found guilty of all charges against her and is currently serving the sentence.
8. Ms. In-sook Kim was the legal counsel of Ms. Jin, a protestor who assaulted a police officer on head with a high heel causing the officer to receive 3 weeks of medical treatment, while protesting with approximately 200 other protesters in front of the Kyobo Bookstore in Jongno-gu, Seoul around 21:40 on 31 May 2013. It is acknowledged that Ms. In-sook Kim visited the hospital where Ms. Jin was hospitalized and agreed to represent Ms. Jin.
9. Although Ms. In-sook Kim heard from Ms. Jin that she had assaulted the police officer with the shoes on 13 June 2013, the lawyer continued to persuade her client to remain silent.
10. Later that day, Ms. In-sook Kim accompanied her client throughout the police interrogation. When Ms. Jin was about to confess the truth, Ms. In-sook Kim stopped the interrogation, took her client outside, and persuaded Ms. Jin not to confess her acts and to remain silent during the interrogation. Ms. Kim kept her from voluntary testimony according to the legal procedures and urged to remain silent.
11. Moreover, Ms. In-sook Kim urged Ms. Jin not to view any undisputable evidence such as photos or video-recordings that the police had presented.
12. After Ms. Jin was transferred to the prosecutor's office, she claimed that Ms. In-sook Kim's legal advice did not help her and admitted all charges during an investigation where Ms. In-sook Kim was not present.
13. Ms. Jin was prosecuted under detention for her crime and later confessed her crime at the court. Considering the fact that Ms. Jin deeply repented of her wrongdoings, the court ordered the sentence to be suspended. Ms. Jin was released from jail and was found guilty in the Supreme Court.

Procedures for disciplinary action against attorneys-at-law and its compatibility with international norms

14. The *Attorney-at-law Act* grants the Attorney Disciplinary Committee of the Korean Bar Association the primary authority to take disciplinary action with a view to strengthening the autonomy of associations of lawyers. Any suspect subject to disciplinary action may raise an objection concerning the disciplinary decision made by the Attorney Disciplinary Committee of the Korean Bar Association to the Attorney Disciplinary Committee of the Ministry of Justice. When dissatisfied, the suspect can receive a decision by the judiciary through the Administrative Court. The suspect's right to procedural fairness and the right to be reviewed by higher institutions are thereby guaranteed.
15. Disciplinary procedure against an attorney generally starts when the Chief Prosecutor of a district Prosecutor's Office or the President of a local bar association applies for the commencement of disciplinary action. The President of the Korean Bar Association will refer the case to the Investigative Committee and confirm any grounds for disciplinary action. If such fact is found, the disciplinary proceedings will be referred to the Attorney Disciplinary Committee of the Korean Bar Association. If the President of the Korean Bar Association declines the application for the commencement of disciplinary action, the applicant may raise an objection to the Attorney Disciplinary Committee of the Korean Bar Association.
16. The Chief Prosecutor of a district Prosecutor's Office has been stipulated as an applicant for the commencement of disciplinary action since the amendment of the *Attorney-at-Law Act* in 2007, with a view to combating corruptions in legal professions and to ensuring public confidence in the judicial system. Prosecutors are guardians of law and defender of public interest in the justice system such as that of the Republic of Korea and shall undertake their duty of pursuing substantive truths in accordance with the principles of truth and justice. In this sense, the Chief Prosecutor is proscribed as an applicant for commencement of disciplinary procedure, when he or she finds any illegality of lawyers during the course of criminal procedure including investigation. Such cases where the Chief Prosecutor or the Minister of Justice who finds illegality during investigation or trial applies for commencement of disciplinary procedure are frequently found in civil law system countries including Belgium, Cyprus, France, and Germany.
17. The Attorney Disciplinary Committee of the Korean Bar Association who decides on a disciplinary action is comprised of members as prescribed in each of the subparagraphs of Article 93 of the *Attorney-at-law Act*, that is, two judges recommended by the Minister of Court Administration, two public prosecutors recommended by the Minister of Justice, three attorneys-at-law elected at a plenary

meeting of the Korean Bar Association, and one professor of laws and one person with experience and reputation, who are recommended by the President of the Korean Bar Association and are not attorneys-at-law.

18. In addition, in accordance with Article 94 of the *Attorney-at-law Act*, the Attorney Disciplinary Committee of the Ministry of Justice that deals with objections against disciplinary decisions made by the Attorney Disciplinary Committee of the Korean Bar Association shall be comprised of one chairperson, the Minister of Justice, eight members, and eight reserve members. The members shall be nominated or appointed by the Minister of Justice, two of whom are judges, two of whom are public prosecutors, one of whom is an attorney-at-law recommended by the President of the Korean Bar Association, and three of whom are professors of laws or have experience and good reputation.
19. The two committees are increasing the number of external members recommended by the court and the Korean Bar Association, instead of the Ministry of Justice, a government authority, when organizing their members, thus guaranteeing the objectivity of the disciplinary proceedings. The Attorney Disciplinary Committee of the Bar Association and that of the Ministry of Justice are separate institutions of which independence in operation is also being secured. The suspect subject to disciplinary action has the right to appear and make statements in front of the Attorney Disciplinary Committee of the Korean Bar Association as well as that of the Ministry of Justice, and may state facts favorable to him/her, submit necessary evidence, and appoint a special attorney-at-law.
20. Such procedures satisfy the requirements for due process, in particular, those specified in the Principles 26 through 29 of the *UN Basic Principles on the Role of Lawyers*, and the relevant law provides for the decision of an impartial disciplinary committee composed of the legal profession and external members such as professors with experiences and high reputation, and judicial review through administrative litigation, which is compatible with international human rights standards.

Legal grounds for disciplinary action against Mr. Jang etc., and its compatibility with international norms

21. The applications for the commencement of disciplinary action against Mr. Kyeongwook Jang and Ms. In-sook Kim were submitted as they were respectively found in violation of Art. 24 Para. 2 of *Attorney-at-law Act*, which provides, “each attorney-at-law shall, in performing his/her duties, be prohibited from concealing the truth or making false statements.” Such duties of an attorney-at-law is also prescribed in the Code of Professional Conduct of the Korean Bar Association as Article 2(4) reads, “an attorney-at-law, with engrossed in the accomplishment of his/her duties, shall not neglect the pursuit of truth.” The revised Code of Professional Conduct, effectuated

on February 24, 2014, makes it clearer by stipulating that “an attorney-at-law shall not distort the truth nor make false statement in performing his/her duties.”

22. Principles 12 through 15 of the *UN Basic Principles on the Roles of Lawyers* provide for the duties and responsibilities of a lawyer, and in particular, Principle 14 reads, “lawyers, in protecting the rights of their clients and in promoting the cause of justice shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.” Article 24(2) of the *Attorney-at-law Act* and Article 2 of the Code of Professional Conduct of the Korean Bar Association are in conformity with the *Basic Principles*.

Actions taken by the Government to ensure the independence of lawyers

23. Chapter 1 of the *Attorney-at-law Act* declares that the mission of any attorneys-at-law shall be to defend fundamental human rights and realize social justice, and has a status to perform his/her duties independently and freely as a legal professional of public nature. The Act provides for the establishment of local bar associations and the Korean Bar Association in order to ensure the independence of lawyers, preserve the dignity of attorneys-at-law and promote the improvement and development of legal services, and also for the administration of affairs relating to the guidance and supervision of attorneys-at-law (Article 64, Article 78).
24. Attorneys-at-law shall not be subject to unlawful intervention or hindrance that is not ruled by law to visit or to communicate with their clients especially when executing his/her duties. Attorneys-at-law also shall not be subject to personal, administrative, or economic sanctions with regard to their rightful exercise of duties according to the Constitution, other laws, and Korean Attorneys’ code of professional conducts.
25. The right to take disciplinary actions against attorneys was transferred to the Korean Bar Association after the 1990s and now the Ministry of Justice can only exert the authority over appeals. Furthermore, anyone who raises an objection against a disciplinary decision may receive a final decision by the judiciary. The current autonomy level of Korean attorneys suffices international norms and standards.

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Disciplinary
Procedure against
lawyers

