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The Unique Characteristics of Korean Attorneys' System

Ham Jung-Ho*

The legal profession of each country has its unique historical and cultural background as previously mentioned by the Japanese representative.

On behalf of Korean Bar Association, I would like to discuss the characteristics of the legal profession in Korea.

In Korea, the legal profession is regarded as a profession with public duties rather than as a profession which simply provides legal services or even as a commercial business.

In this regard, the Korean Attorneys Act defines the term attorney as a legal professional with public duties and provides that the duties of an attorney shall be to protect the fundamental human rights and to ensure that the social justice shall be realized. It further provides that an attorney shall make every effort to maintain the social order and to improve the legal system in conformity with their duties. On the basis of such public nature of the profession, Korean attorneys, thus, have been making significant achievements in realizing the social justice, which other professions could not attempt to achieve.

It is true the fundamental human rights of Koreans have not been properly protected partly because the history of democracy and constitutionalism in Korea is relatively short and particularly because the realization democracy had been obstructed by the military regimes for a long time in the past. For decades, however, Korean attorneys have made such efforts to protect human rights and develop democracy in Korea as publishing collections of human rights violation cases and making public statements against such violations. In the course of such activities against the military regimes, some attorneys were even arrested and imprisoned.

In recognition of such longtime efforts, Korean attorneys are viewed as the last resort for the protection of human rights and

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democracy. Thus, rather than being recognized as mere legal service providers, Korean attorneys are recognized as professionals who perform public duties of protecting human rights as a critical member of the Korean judiciary.

Therefore, Korean attorneys are selected based on strict qualification standards. In the past, only dozens of attorneys were selected annually. The number of attorneys has been increasing gradually and approximately 700 attorneys are selected every year. Currently, approximately 3,500 attorneys practice law in Korea, whereas the passing rate of the Korean Bar still remains very low at around 3%.

Such strict qualification standards for Korean attorneys stem from the public notion that it is deemed far more desirable, in the light of the public nature of the legal profession in Korea, to select a small number of attorneys with a high moral character based on strict qualification standards than to seek to improve the quality of legal services through open competition by increasing the number of attorneys. Further, those applicants who pass the Korean Bar Exam are required to take a two-year mandatory practical training at the Judicial Research and Training Institute which is under the supervision of the Supreme Court of Korea, in a capacity of a public servant. This status as a public servant is also based on the public nature of Korean attorneys' duties.

One of the notable characteristics of Korean attorneys is that we traditionally start our career only after acquiring a wealth of experience by serving as a judge or prosecutor for a long period of time. This system is quite distinguishable from that in the Anglo-American countries. I believe that this longtime tradition is also based on the notion that only those attorneys with a variety of experience in other areas of the legal community could perform their public duties to realize the social justice and protect human rights.

Therefore, far more professional ethical standards are imposed on the legal profession than on any other profession such as public accounting, including a high standard of independence.

In this regard, in dealing with the transnational practice issue in the legal profession, I believe that the unique characteristics of each country's legal profession should be considered and that such an attempt to apply uniform principles across the board is very inappropriate.



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TRANSNATIONAL PRACTICE FOR THE LEGAL PROFESSION
FORUM

L'EXERCICE INTERNATIONAL DE LA PROFESSION D'AVOCAT

PARIS 9 & 10 NOV. 1998

FORUM ON TRANSNATIONAL PRACTICE FOR THE LEGAL
PROFESSION

JOINT CLOSING COMMUNIQUE

On the invitation of the American Bar Association, the Council of the Bars and Law Societies of the European Community and the Japan Federation of Bar Associations, the bar leaders of Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, The Netherlands, New Zealand, Norway, Poland, Portugal, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States as well as representatives of the Inter-American Bar Association, International Bar Association, and Union Internationale des Avocats, met on November 9th and 10th at the Maison du Barreau in Paris for a « Forum on Transnational Legal Practice for the Legal Profession ».

The Forum considered common interests and concerns of lawyers from these countries and the changes in the structure of the legal profession that have occurred as a result of the globalisation of business and the increased access to information worldwide.

The Presidents of each organisation - Philip S. Anderson of the ABA, Michel Gout of the CCBE and Shigeru Kobori of the JFBA - called attention to the basic principles of the profession recognised in the entire world: a profession well educated and competent, a profession which exercises its expertise independently, a profession governed by ethical principles and a profession which recognises its responsibility towards the clients and the Public interest.

The bar leaders considered ways to facilitate the ability of lawyers to practice in foreign jurisdictions, an issue that will be on the agenda of the World Trade Organisation's Working Party on Professional Services in coming years and they decided to co-ordinate their efforts in order to answer in a concerted way. The Forum discussion also focused on the effects of multidisciplinary practice on the legal profession. Also on the Forum agenda were ethical issues presented by transnational practice, social responsibility and independence of the legal profession and forms of licensure of foreign lawyers.

Representatives of the three organising associations as well as other participants affirmed that the legal profession performs a unique and valuable service in each of their societies. They affirmed as well that, despite their undoubted differences as to some issues, lawyers from all over the world share common values to a remarkable extent. The ABA, the CCBE and the JFBA accordingly resolved to explore additional fora and procedures by which their joint interests - and, more important, the interests of the communities they serve - can be advanced.

The secretariat of the Forum is undertaken by the CCBE (Sophie Testaert).

All correspondence should be sent to the CCBE.

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Toute correspondance doit être adressée au CCBE.

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