



Supreme Court of Korea

Introduction to the Judicial System of Korea



April, 2008



Introduction

● Judicial Branch

- Definition: The national authority that exercises judicial power separate from the administrative and the legislative branch.

Constitutional Ground of the Judiciary

- Article 101 (1) Judicial power shall be vested in courts composed of judges.
(2) The courts shall be composed of the Supreme Court, which is the highest court of the state, and other courts at specified levels.
(3) Qualifications for judges shall be determined by Act.
- Article 27 (1) All citizens shall have the right to trial according to law by judges qualified and appointed under the Constitution and Act.

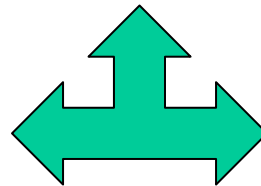


Supreme Court
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The Status of the Judiciary

**The Judicial
Branch**

**The Administrative
Branch**



**The Legislative
Branch**

Judicial Independence

- One of the most symbolic parts of a nation that faithfully respects the rule of law and is the request for the separation of three branches.



Open Trial

**Constitution requires an open trial,
hearings and rulings**

– Exception

When hearings may jeopardize
either national security or social
custom.

Three Instance Trial System

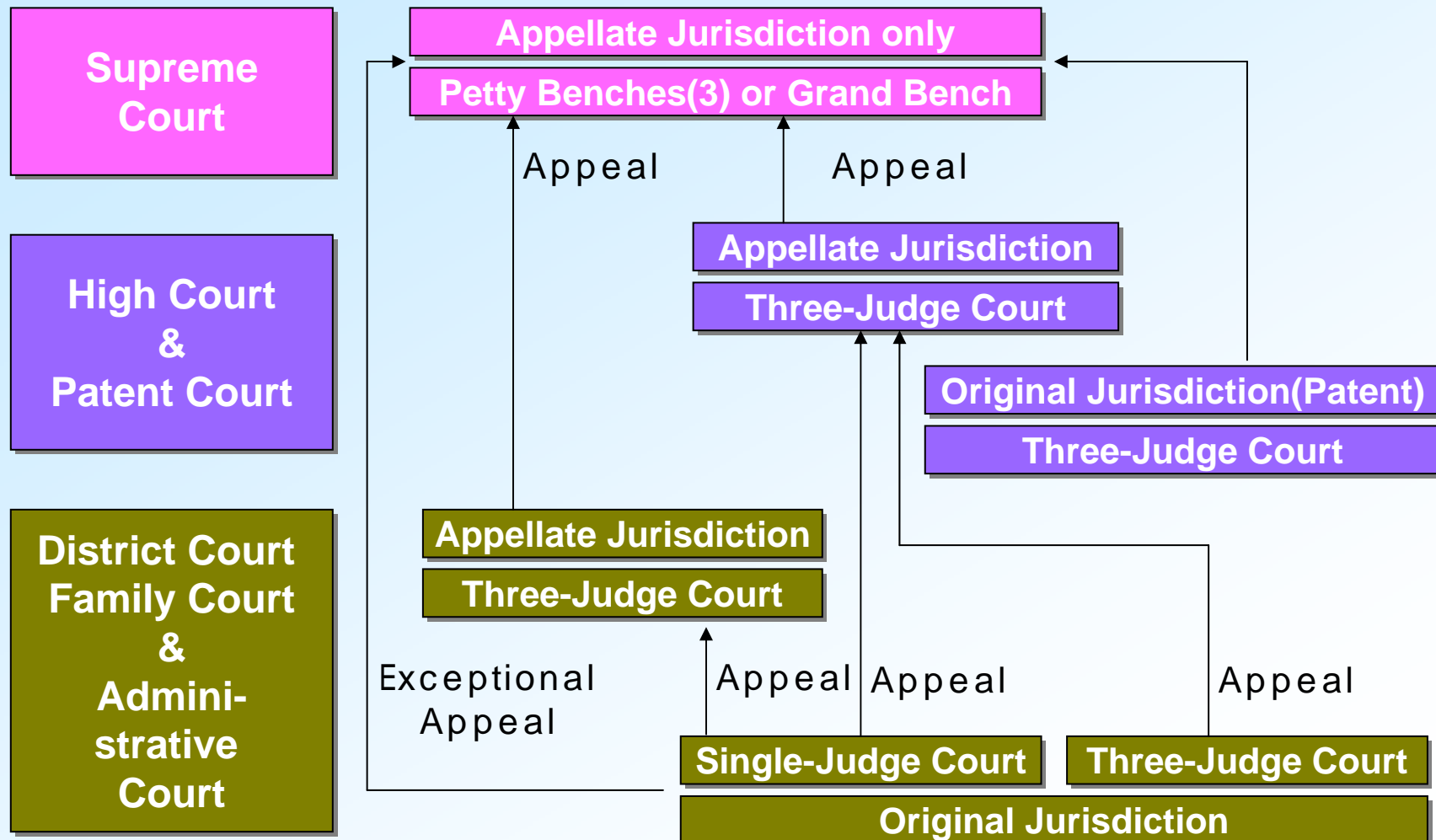
- The Korean judicial system
(three instance trial system)

- District Court
- High Court
- The Supreme Court



Supreme Court
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Appellate Process





Courts in Korea



Supreme Court
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Organization of the Judiciary



The Supreme Court



Supreme Court

- Comprised of the Chief Justice and 13 Justices
- 1 Justice : Minister of the National Court Administration (non-adjudicatory)
- The Chief Justice and 12 Justices (adjudicative functions)

The Court of Last Resort

- Appeals from
 - High Courts
 - The Patent Court
 - The Appellate Panels of the District Courts or the Family court
- Authority to review the ruling rendered by the Korean Maritime Safety Tribunal
- Exclusive Jurisdiction over the validity of the presidential or parliamentary election
- Constitutionality or legality issue

Jurisdiction

- Grand Bench
 - Composed of more than two-thirds of all the Justices with the Chief Justice
- Petty Bench
 - 12 Justices are equally divided into three Petty Benches

Petty Bench and Grand Bench

- Most Cases are handled by the Petty Bench, but refer to the Grand Bench if:
 - A Petty Bench fails to reach a consensus
 - any order, rule, or regulation is in contravention of the constitution or contrary to the law
 - Where it is necessary to modify the previous opinion of the Supreme Court on the interpretation of the Constitution, laws, orders, rules or regulations
 - Adjudication by a Petty Bench is not appropriate

Judicial Administration

- Administrative Management affairs including organization, human resources, budgets, accounting, facilities, etc...
- The Chief Justice exercises general control
 - May delegate a portion of his/her power
- Important judicial administrative affairs require resolution of the Supreme Court Justice Council

The Supreme Court Justice council

- Highest deliberative body on judicial administration
- Composed of all the Justices and presided over by the Chief Justice
- A resolution of the Council requires a quorum of more than two-thirds of all the Justices and the consent of a majority of the members present
- The Chief justice has a casting vote



● Resolutions

- Consent to appointment of the lower court judges
- Establishment or revision of the Supreme Court Rules and Regulations
- Accumulation and publication of judicial precedents
- Request for the budget
- Expenditure of reserve fund
- Settlement of accounts



Judicial Law Making Power

- Establishment of rules and regulations concerning judicial proceeding, internal discipline of the courts, or management of business
- To enact or revise law, the Chief Justice may present his opinion to the National Assembly

Research Judges

- A certain number of judges who undertake to examine the cases as well as to conduct research
- They are appointed from almost among the judges
 - Presiding judges of the District Court or
 - The Associate Judges of the High Courts



Affiliated Organization of the Supreme Court

National Court Administration

- Responsible for general administrative affairs of the court
- The Chief Justice appoints the Minister and the Vice Minister

Judicial Research and Training Institute

- Established under the Supreme Court
- Training to judges and judicial trainees
admitted by the Supreme Court
- Provide classes for special request by
government

The Training Institute for Court Officials (TICO)

- Plans and provides a training and development program for court clerks, marshals and other staff of the judiciary
- Headed by the President who is appointed among judges or court officials

The Supreme Court Library

- Manages and provides a literary collection
- Compiles, publishes and preserves relevant information such as court decisions, laws and regulations, historical records of the Judiciary
- The Library's publications
 - Collection of the Supreme Court decisions
 - Collection of Grand Bench Decisions of the Supreme Court
 - Summaries of the Supreme Court Decisions
 - Case Notice



High Courts and District Courts



High Courts

- Location of high Courts
 - Seoul
 - Busan
 - Daegu
 - Gwangju
 - Daejeon



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- Appellate jurisdiction over rulings rendered either by a panel of three judges of the District Courts or the Family Court, or by the Administrative Court
 - Appeals from judgments or rulings in civil cases rendered by a single judge of the District Courts or Branch Courts when the amount in controversy exceeds 80 million Korean won (US\$ 80,000)

District Courts

- Chief judge and a certain number of judges
- 18 District Court around the nation
- A Branch Court, Family Branch Court, Municipal Court may be established under the District Court
- Retain original jurisdiction over civil and criminal cases



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A sole-judge panel



A Three-judge panel



A Panel of Three judges is required to sit for the following cases :

- Jurisdiction in Civil Cases

- Amount exceeding 100 million Korean won (US\$ 100,000)
- Exception for cases involving the claim for payment of checks or bills

- Criminal Cases

- Cases falling under death penalty, life imprisonment, or imprisonment for a minimum of one year

Appellate Jurisdiction

- Judgments or rulings rendered by a single judge of the District Courts, Branch Courts, or Municipal Courts
- A panel of three judges

Municipal Courts

- 101 Municipal Courts across the nation
- Jurisdiction over small claim cases in which the amount disputed does not exceed 20 million Korean won (US\$ 20,000)
- Misdemeanor cases- penal detention for less than 30 days or a fine not exceeding 200,000 Korean won (US\$ 200)



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Specialized Court

- Patent Court
- Family Court
- Administrative Court

Patent Court

- Newly established on March 1, 1998
- Level equal to the High Court
- Two-tier system
 - Patent Court and then Supreme Court

Family Court

- Only one family court in Seoul
- In other areas, the respective District Court exercises similar function
- Domestic relations (A panel of three judges)
- Juvenile offense cases and domestic violence cases (A single judge)

Administrative Court

- The administrative court is only located in Seoul
- The respective District Court perform the functions of the Administrative Court until a separate administrative court is established in that region
- Cases
 - Tax
 - Eminent domain
 - Labor

The background of the slide is a blue-tinted photograph of the interior of the Indian Parliament (Lok Sabha). The image shows the semi-circular debating chamber with its high ceiling, numerous lights, and rows of seats. In the center background, a large emblem is visible on the wall. The text 'The Constitutional Court' is overlaid on this image in a large, bold, black font with a slight drop shadow.

The Constitutional Court

The Constitutional Court

- Types of cases
 - Constitutionality of a law
 - Impeachment
 - Dissolution of a political party
 - Constitutional petitions
 - Jurisdictional conflicts involving State agencies and/or local governments

Three Factors before review

- A concrete case is pending before the court
- A law applies to the concrete case
- Whether the law's constitutionality affects the outcome of the decision



III. Legal Professions



Judges

● Qualification

- Passed the National Judicial Examination
- Complete the two-year training program at the Judicial Research and Training Institute
- Or those who have obtained qualification as lawyers

● Term

- 10 year service term

The Chief Justice and Justices of the Supreme Court

● Qualification

- Over 40 years old and have served 15 or more years as a judge, public prosecutor or lawyer, or
- Person who is qualified as a lawyer, has been engaged in legal affairs at the state organs, etc or
- Person who is qualified as a lawyer, and has been in an office higher than assistant professor in the field of jurisprudence



● Procedure to become Justices of the Supreme Court

- Appointed by the President of the Republic
- Confirmation by the National Assembly

● Term of the office of the Chief Justice

- Six years without re-appointment

● Term of the Justices of the Supreme Court

- Six year terms, but may be reappointed



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Procedure to become a judge

- Appointed by the Chief Justice
- Consent by the Supreme Court
Justices Council

Removal

- By impeachment or by a sentence of imprisonment or heavier
- Not subject to suspension from office
- Not subject to a reduction in remuneration or other unfavorable treatment (except disciplinary measure)



Disciplinary Measure

- Committed a serious breach of his/her duties or
- Been negligent in performance of his/her duties
- Degraded himself/herself
- Maligned the dignity of the court



Training

● Overseas Training

● Long term Training Program

- Research in a university, education institution, or research center located overseas

● Internationalization Training Program

- To promote understanding of diverse cultures and different system



Court Officials

● Assist judges with court proceedings

- Recording court activities
- Keeping court records
- Issuing various certificates
- Serving documents
- Registration



Lawyer

Duties

- To Client
- Responsibility to the court in ensuring fairness in that adjudication

Qualification

- Should pass the National Bar examination and complete two year training program or
- Should pass the Military Judiciary Examination and have served 10 years or more

The Notaries Public

- The notaries public draw up notarial deeds on juristic acts and attest to the authenticity of any instruments or writings signed by private persons
- Appointed by the Minister of Justice from among persons who are qualified as judges, public prosecutors, or attorney at law

Judicial Scrivener

- Preparation of documents to be submitted to a court or public prosecutor's office
- Preparation of documents necessary for registration
- Must pass the Judicial Scrivener Examination

Marshals

- Independent, extra-judicial officers affiliated with the District Courts
- Engaged in the execution of judgments and the service of documents