



Pro Bono Practices and Opportunities in South Korea

INTRODUCTION

Society's attitude toward pro bono work in South Korea has evolved significantly in recent decades. This transformation was primarily driven by the country's transition to democracy in the late 20th century along with the 2009 reform in the legal education system which led to further changes in the general legal system. The biggest change to the pro bono culture in South Korea is undoubtedly the mandatory 30-hour per year pro bono requirement that the Attorney-at-Law Act¹ and the regulations of the Korean Bar Association ("KBA") introduced in 2000. However, in practice, legal aid has been and remains the primary means of providing legal services to the indigent population in South Korea. In addition to legal aid and the pro bono work contributed by individual attorneys, a growing number of large law firms and international firms are increasingly engaging in pro bono work.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The South Korean legal system is a fairly new development of the civil law system which effectively dates from the introduction of the Constitution of the Republic of Korea (the "**Constitution**") following South Korea's independence after World War II.

The Courts

Court system

The three-tiered South Korean judicial system was created through the Court Organisation Act of 1949. The 1987 Constitution provides that judges will not be removed from office² and also guarantees judicial independence³. The court hierarchy comprises specialised courts (e.g. Family Court and Administrative Court), District Courts, High Courts, the Constitutional Court, and the Supreme Court. The 13 District Courts have original jurisdiction over most civil and criminal cases, and they may also have appellate jurisdiction in cases where the District Court decision was made by a single judge. The six High Courts have appellate jurisdiction over cases decided by the lower courts. The Constitutional Court, established in 1988 under the revised Constitution is committed to protecting the constitutional rights of the people and decides on cases of constitutional importance.

Appointment of Judges

In the past, in order to become a judge in South Korea, the candidate had to pass the national judicial examination and also complete a two-year training program at the Judicial Research and Training Institute ("JRTI").⁴ The vast majority of judges in South Korea were selected from those who had most recently completed the JRTI training program, but some were also selected from practicing attorneys (who had previously completed the JRTI program). As of 2009, however, there was a reform of the legal education system, and law students are now required to attend a U.S style three-year law school program instead of the JRTI and the national judicial examination. Those selected to be judges following this reform must also have practised law for several years. The selection process works such that the candidates must be nominated for their position by the Chief Justice, but their nominations have to be

¹ English version of Attorney-at-Law Act, Act No. 8321 of March 29, 2007, available at <http://www.moleg.go.kr/english/korLawEng?pstSeq=52643> (last visited on September 4, 2015).

² Other than for impeachment, criminal acts or incapacity (Article 106).

³ Article 103 provides that "judges shall rule independently according to their conscience and in conformity with the Constitution and laws."

⁴ Article 42-2 of the Court Organization Act, but repealed in 2007.



pre-confirmed by the Supreme Court Justices Council. After a term of ten years, a judge may be re-appointed (with the exception of Supreme Court judges, whose term is limited to six years, although they can also be re-appointed).

The Practice of Law

Education

Becoming a prosecutor or choosing to practice law as a private attorney involves the same education and training process as becoming a judge in South Korea. Prior to the legal education reform in 2009, the study of law was offered to students at an undergraduate level. Applicants then had to take the national judicial examination. Those who passed the examination then had to complete a two-year training program at the JRTI to receive their licences. Once they had passed this stage, they could choose a career as a judge, prosecutor or lawyer. Before 1981, JRTI graduates generally chose to become judges or prosecutors⁵.

The new changes, however, introduced a U.S. style law school program and applicants are now required to have a bachelor's degree, foreign language proficiency and a satisfactory score on the Legal Education Eligibility Test (which is different from the national judicial examination under the previous system). Only 25 universities have been approved for the new law schools, and there is a limited number of places at each of those universities (with the aggregate number of spaces among the 25 law schools per year capped at 2,000), making qualification quite competitive.

Once a Korean lawyer has qualified and has acquired a number of years of domestic legal practice, it is quite common for them to pursue an LLM overseas (mainly in the US or the UK) and to be dual-qualified.

Licensure

If a lawyer wishes to practice law in South Korea after receiving their licence⁶, they must register with the KBA⁷.

For those attorneys entering the South Korean legal market from abroad, there is a requirement to register as Foreign Legal Consultants ("FLC").

Since September 2009, the Foreign Legal Consultant Act has allowed foreign legal consultant offices ("FLCO")⁸ to establish and operate representative offices in Korea⁹.

Demographics

In 2015, the total number of lawyers (including judges, prosecutors, and private practitioners) was only 16,340¹⁰ out of a population of 50 million. By comparison, the US has 24 times as many lawyers per capita as South Korea¹¹.

As of December 2009, there were 2,468 judges, 1,699 prosecutors and 11,016 registered private attorneys in South Korea.¹² The legal market in South Korea has traditionally been a male-dominated

⁵ Yoon Dae-Kyu, The Paralysis of Legal Education in Korea, in LEGAL REFORM IN KOREA 36, at 174.

⁶ Until 2017, both systems of qualification operate concurrently until 2017, but after that point, the traditional qualification system is expected to be phased out. There are ongoing discussions, however, about whether to revive or maintain whole or part of the traditional judicial examination system.

⁷ See http://www.koreanbar.or.kr/eng/sub/sub03_01.asp (last visited on September 4, 2015).

⁸ Only those law firms whose headquarters are located in a country which has signed and ratified a Free Trade Agreement (FTA) with South Korea are eligible (http://www.koreanbar.or.kr/eng/sub/sub04_02.asp) (last visited on September 4, 2015).

⁹ As of June 2015, there are 23 international law firms in South Korea.

¹⁰ See http://weekly.donga.com/docs/magazine/weekly/2015/07/10/201507100500012/201507100500012_1.html (last visited on September 4, 2015).

¹¹ Kim, Eun. THE YIN & YANG OF AMERICAN CULTURE: A PARADOX. Nicholas Brealey Publishing. (2001). p. 150.



field, and although it is gradually changing, in 2015, only about 22.3% of all successful bar applicants were female¹³.

Legal Regulation of Lawyers

The KBA is the main regulatory body for lawyers in Korea, with about 15,000 members. Membership of the KBA is compulsory for all practicing lawyers and has been growing in recent years, especially since the reforms.

In addition to presenting its opinions and research results on the development of policies, legislation and law amendments, the KBA holds annual conferences and provides training for its members to better cope with the changing dynamics of the legal sector in South Korea.

With an increasing number of FLCs and FLCOs in the country, the KBA is also responsible for strengthening the competitiveness of South Korean lawyers and law firms, as well as for improving the relationships with foreign legal organizations.

South Korea's Ministry of Justice is a cabinet-level ministry overseeing justice affairs. Its international affairs department is primarily responsible for the liberalisation of the legal market and the negotiation of free trade agreements ("**FTAs**"). Since the FTAs with the EU and the US have come into effect, the Ministry of Justice has also been responsible for implementing the stages of market liberalisation under the FTAs, and its role includes administering the FLC application process and the licensing process for FLCOs.

LEGAL RESOURCES FOR THE INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In Civil Proceedings

The Korean Civil Procedure Act (the "**KCPA**")¹⁴ outlines the conditions under which the court hearing a case may grant legal aid. It may do so either *ex officio* or upon the request of a person who is unable to pay for the costs of the lawsuit, and it must not be a lawsuit that will obviously fail. The aid can be granted in varying forms, extending to payment of litigation costs, deferral of a fee payment or a substitute payment for a lawyer or execution officer, exemption from the security for the costs of the lawsuit, and deferral or exemption of other expenses (as prescribed by the Supreme Court Regulations). The aid shall extend only to the person to whom it was granted, and not to successors to the litigation. The court may also overturn its decision granting the aid, if it finds that the person concerned had or has acquired the solvency needed to be able to pay for the costs themselves.

In Criminal Proceedings

With respect to criminal legal aid, Article 12(4) of the Constitution provides for a state-appointed counsel system. Pursuant to Article 33 of the Criminal Procedural Act (the "**CPA**"), a court will *ex officio* appoint a defence counsel, regardless of whether it is requested by the defendant, when the defendant is placed under arrest, a minor, 70 years of age or older, deaf and dumb, suspected of having a mental and physical disorder, or indicted for a case carrying a potential sentence of the death penalty or life imprisonment.

¹² See http://www.moj.go.kr/HP/ENG/eng_02/eng_2040.jsp (last visited on September 4, 2015).

¹³ See <http://biz.heraldcorp.com/view.php?ud=20150805000475> (last visited on September 4, 2015).

¹⁴ In Section 3 of the KCPA's third Chapter (Articles 128-133), where it lays out the rules regarding litigation aid in the context of repartition of costs for lawsuits.



State-Subsidized Legal Aid

The Korea Legal Aid Act (the “KLAA”)¹⁵ was enacted and proclaimed on December 23, 1986, leading to the creation of the **Korea Legal Aid Corporation** (the “KLAC”)¹⁶ on September 1, 1987. The KLAC was established to protect human rights and to provide necessary legal aid services to those in economic difficulty or not adequately protected by South Korean law.¹⁷ The scope of the KLAC’s services include minor legal assistance with legal forms and documents, legal representation in, amongst others, civil and family law cases, free criminal defence service, and legal education programs /campaigns.¹⁸ When represented by a KLAC lawyer or a public service advocate, the service recipient must, at conclusion of the case, pay basic legal expenses such as stamp tax, service of process, and the attorney’s fee (all of which are considerably lower than those demanded by a private lawyer). In addition, the KLAC offers free legal aid to those who are in need of particular protection, for example, farmers, fishermen, disabled people and veterans.¹⁹ The number of legal aid cases and the amount of free legal advice provided by the KLAC have been steadily increasing over the years. Between 1987 and 2013, the KLAC assisted on 1.3 million legal aid cases – of which 1,198,245 were civil cases and family disputes, and 249,645 were criminal matters – and 67 million provisions of free legal advice.²⁰ The KLAC is guided and supervised by the Ministry of Justice.²¹

The Legal Aid Foundation of the KBA also provides legal aid, in particular to North Korean refugees and to the elderly, minors and the disabled.²²

The Korea Legal Aid Center for Family Relations was established in 1956 and was registered with the Ministry of Justice as a legal aid corporation under the Legal Aid Act in 1988. They provide a variety of legal aid services, including legal counselling on family affairs and mediation to legal aid in litigation.²³

Mandatory assignments to Legal Aid Matters

Unmet Needs and Access Analysis

Although the KLAC has its headquarters in Seoul, there are more than 120 branches and local offices of the KLAC throughout South Korea. Consequently, citizens from all around the country are able to access legal aid and seek help, which range from the preparation of legal forms and documents to representation for civil, family, and criminal cases.

In parallel to the existing comprehensive legal aid services, South Korea is expanding the scope of pro bono services provided by private practices and NGOs.

¹⁵ English version of Legal Aid Act, Act No. 11041 of September 15, 2011, available at <http://law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EB%B2%95%EB%A5%A0%EA%B5%AC%EC%A1%B0%EB%B2%95#liBgcolor0> (last visited on September 4, 2015).

¹⁶ See English website of Korea Legal Aid Corporation, <http://eng.klac.or.kr/english/intro/01.php> (last visited on September 4, 2015).

¹⁷ Article 1 in conjunction with Article 8 of Legal Aid Act.

¹⁸ See <http://eng.klac.or.kr/english/infor/02.php> (last visited on September 4, 2015) and <http://eng.klac.or.kr/english/infor/04.php> (last visited on September 4, 2015).

¹⁹ Article 7(2) of Legal Aid Act. See also <http://eng.klac.or.kr/english/infor/06.php> (last visited on September 4, 2015).

²⁰ See <http://eng.klac.or.kr/english/news/01.php> (last visited on September 4, 2015).

²¹ Article 35(1) of Legal Aid Act.

²² See English website of Korean Bar Association, <http://www.koreanbar.or.kr/eng/default.asp> (last visited on September 4, 2015).

²³ See English website of Korea Legal Aid Center for Family Relations, <http://lawhome.or.kr/law1/eng/sub01/body01.asp> (last visited on September 4, 2015).



PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

Public service has not been the norm for non-public sector lawyers in South Korea historically. This began to change when the 2000 Attorney-at-Law Act came into force, requiring 30 hours of pro bono work per lawyer.²⁴ In practice, however, this requirement may be surpassed by paying certain amounts into the pro bono fund instead of working the specified hours. Those who have been practicing for less than two years or those who are older than 60 years are also exempt from the requirement.

Law Firm Pro Bono Programs

A further change in the pro bono sector has come with the introduction of the FLCOs in South Korea. In December 2012, the first Pro Bono Symposium was held in Seoul, and this was an opportunity for over 100 law firms to discuss the role of pro bono in the South Korean legal sector. This symposium was mainly led by foreign law firms who wanted to inspire Korean law firms to think of pro bono as an integral part of the culture of legal service.

As pro bono becomes more recognised in the South Korean legal sector, Korean law firms have increasingly been taking the initiative to provide pro bono services. One of Korea's biggest law firms, Bae, Kim and Lee, started the Dongcheon Public Interest Foundation²⁵ in 2009 which offers free legal consultations, defense and legal aid activities and direct support for disadvantaged social groups.²⁶ Given the political situation with North Korea, the Dongcheon Foundation also focuses on providing pro bono services to North Korean refugees.

However, what is considered to be "pro bono" in South Korea seems to be relatively broad. Kim & Chang, another leading law firm in South Korea, launched the Kim & Chang Committee for Social Contribution in 2013 to help encourage participation in the firm's pro bono activities. While the committee does also provide legal services under its pro bono program, a lot of the committee's activities seem to be focused on increasing donations and volunteer activities such as hosting mock trial competitions for students. In this sense, "pro bono" seems to include what would otherwise be considered "community service" in the U.S.²⁷

Non-Governmental Organisations

There are also a number of NGOs like *Gong-Gam*²⁸ which advises on, and provides representation in, strategic litigation on behalf of minorities and the underprivileged. For example, in 2007 *Gong-Gam* successfully obtained recognition of the refugee status of a Chinese asylum seeker when the Seoul Administrative Court accepted his claim of fear of persecution should he be forcibly returned to China. This was the first time such a decision was made by the Administrative Court in South Korea.

²⁴ Attorney-at-Law Act, Law No. 1154 (September 24, 1962), amended by Law No. 6207, article 27 (January 28, 2000). The details as to how many hours are actually required will be separately regulated by the KBA regulations, however.

²⁵ See <http://www.bkl.co.kr/front/law/about/society.do?lang=eng#.Ve7UA0377cs> (last visited on September 4, 2015).

²⁶ See <http://www.bkl.co.kr/front/law/about/society.do?lang=eng#.VZwur010yUk> (last visited on September 4, 2015).

²⁷ See http://webcache.googleusercontent.com/search?q=cache:i_XwOwMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospects-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+%&cd=2&hl=en&ct=clnk&gl=uk (last visited on September 4, 2015).

²⁸ See <http://www.kpil.org/eng/index.php> (last visited on September 4, 2015).



In August 2014, the Public Interest Litigation Centre²⁹ was established to provide legal services with minimum legal charges to help socio-economically underprivileged applicants to file cases.

The Sarangsaem Foundation,³⁰ which was established under the KBA, also provides financial support to pro bono activities conducted by law firms.

University Legal Clinics and Law Students

Pro bono is not a mandatory requirement for students pursuing a law degree, but there are a number of organisations and societies through which students can participate.³¹

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Although the concept of pro bono is a relatively new one in South Korea, there have always been a large number of public interest lawyers in the country. Particularly under the military and authoritarian rules in the 1960s to 1980s, groups of human rights lawyers defended the rights of political prisoners and dissidents. A professional affiliation called *Minbyun* was formed and civic-minded lawyers supported specific causes such as women's rights, workers' rights, and economic justice.

On the whole, the *Minbyun* lawyers were regarded as an anomaly within the legal profession. As they represented political prisoners and protesting laborers, the *Minbyun* lawyers were stigmatised as troublemakers. In some cases, they were even regarded as pro-communist by the state, which, given the political situation in South Korea, was a way to label these lawyers as political dissidents themselves. This label lingered into the early 1990s, when the Ministry of Justice would describe the *Minbyun* lawyers as "unsuccessful applicants for jobs as judges or public prosecutors"³².

However, since the advent of a liberal-democratic administration, society's perception of the role of *Minbyun* lawyers has undergone a drastic change. Public interest lawyers today no longer have to fight against an authoritarian regime, and as a result have different opportunities, priorities and status. In 2002, Roh Moo-hyun, a former *Minbyun* lawyer, was elected President. A *Minbyun* lawyer founded a citizens' group called People's Solidarity for Participatory Democracy which, according to the public polls of 2002 to 2005, was regarded as the most influential NGO in South Korea³³. In this sense, the development of South Korea is a prime example of how democratic change can shape the nature and importance of public interest law.

Current State of Pro Bono

The main struggle for South Korean attorneys seems to be that there is no clear system in place for law firms to assist NGOs with their work.³⁴ Further, some firms have been informed that NGOs prefer to receive financial donations over pro bono services. While U.S. law firms have strived to treat for-profit clients and pro bono clients equally, this has been more difficult in South Korea where the pro bono culture is still in its early stages.

²⁹ See <http://www.publicinterest.co.kr> (last visited on September 4, 2015).

³⁰ See <http://kba-sarangsaeam.or.kr> (last visited on September 4, 2015).

³¹ Although in the traditional system, the Public Services Advocates Act, Law No. 4836 of 1994 required male JRTI graduates who have not fulfilled their mandatory military service to work at legal aid agencies.

³² Ahn, Kyong Whan, The Growth of the Bar and the Changes in the Lawyer's Role: Korea's Dilemma. LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY. 119, 123 (Philip S.c. Lewis ed., 1994).

³³ 2005 Hanguk, nuga umjigi-neun-ga [Who's Moving in Korea 2005?], SISA JOURNAL, October 25, 2005, at 60.

³⁴ See http://webcache.googleusercontent.com/search?q=cache:i_XwOwMXVgJ:thebeye.probonoinst.org/wp-content/uploads/2013/01/12.21.12-The-Current-Status-and-Prospect-of-Pro-Bono-Work-in-Korean-Law-Firms.docx+&cd=2&hl=en&ct=clnk&gl=uk (last visited on September 4, 2015).



Socio-Cultural Barriers to Pro Bono

As mentioned elsewhere, the legal profession in modern day South Korea is a prestigious one, especially given its competitiveness. Further, despite recent developments, the legal sector is still male-dominated, with the number of female lawyers lagging far behind male lawyers. In addition, although law schools and bar exams are merit-based (in that anyone can take the exam), alumni relations at both the law schools and JRTI levels create a special club of legal members. This is particularly true given that most JRTI candidates will have graduated from the same universities. When looking at the set-up and make-up of the South Korean legal profession, it still remains an “old boy’s network”³⁵.

Those factors all raise the issue of whether the legal elite can serve the interests of the public adequately and represent the underprivileged. However, there are increasing efforts on the part of the government, law firms and private attorneys to be more pro-active in providing pro bono services. Especially with the arrival of FLCOs, there is still a lot of hope when it comes to pro bono in South Korea.

Pro Bono Resources

Legal Aid Resources:

- Korea Legal Aid Corporation:
Address: Korea Legal Aid Corporation Bldg, 1703-10, Seocho 3-dong, Seocho-gu, Seoul, South Korea
Phone: +82 2 532 0132
Website: http://eng.klac.or.kr/english/intro/09_2.php (last visited on September 4, 2015)
- Legal Aid Foundation of the KBA:
Address: Korean Bar Association, 5th Floor, 1718-1, Seocho-dong, Seocho-gu, Seoul, South Korea
Phone: +82 2 3476 6515
Website: <http://www.koreanbar.or.kr/eng/> (last visited on September 4, 2015)
- Korea Legal Aid Center for Family Relations:
Address: 11-13 Yeouido-dong, Youngdeungpo-gu, Seoul 150-868, South Korea
Phone: +82 2 780 5688 / +82 2 1644 7077
Website: <http://lawhome.or.kr/law1/eng/sub01/body01.asp> (last visited on September 4, 2015)

Pro Bono Assistance

- Korean Bar Association:
Address: 5th Floor, Korean Bar Association, 1718-1, Seocho-dong, Seocho-gu, Seoul, South Korea
Phone: +82 2 3476 4000
Website: <http://www.koreanbar.or.kr/eng/> (last visited on September 4, 2015)
- Seoul Bar Association:
Address: 3rd Floor, Lawyer’s Hall, 1718-1, Seocho 3-dong, Seocho-gu, Seoul, South Korea 173-885
Phone: +82 2 3476 6000
Website: <https://www.seoulbar.or.kr/EgovPageLink.do?link=/en/EnglishHistory> (last visited on September 4, 2015)

³⁵ Goedde, Patricia. From Dissidents to Institution-Builders: The Transformation of Public Interest Lawyers in South Korea. EAST ASIA LAW REVIEW. Vol. 4:63 (2009) at 72.



CONCLUSION

While it is certainly true that much is being done in South Korea to engage more lawyers in pro bono activities, the scope of what the law recognises as a public interest appears to be quite broad. While various “pro bono” departments or organisations have been set up within many law firms, the activities they engage in may not necessarily align with what is recognised as pro bono elsewhere. Similarly, while the Attorney-at-Law Act has introduced a mandatory requirement for lawyers to devote a specified number of hours to pro bono services, there are ways for lawyers to sidestep this requirement. Importantly, however, the South Korean legal sector is still developing and is making a concerted effort to improve its pro bono involvement.

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