



Judicial Efforts to Prevent Organized Crime in South Korea

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1. Judgment on the confiscation of a building used for sex trafficking

In 2013, the Supreme Court of Korea rendered an interesting judgment on the confiscation of a building used as a brothel. The defendant had covertly run a prostitution business for one year in a five story building, earning 150,000 US dollars in total. The Korean Criminal Act provides that a thing which has been used in the commission of a crime may be confiscated. Although confiscation is not required in all cases, the Supreme Court held in the case that it was legitimate to confiscate the building itself, taking into account the amount of proceeds, the net worth of the building, his criminal record, etc. Furthermore, the court decided that the defendant should forfeit the proceeds generated from arranging sex trafficking.

2. Traditional strategy to fight organized crime

A few decades ago, the Korean government believed that the most effective way to control organized crime was cracking down on specific crimes committed by organized criminals. For example, in 1990, the 6th President Roh Tae-woo declared a war against crime, strengthening a crackdown on various crimes including narcotic crimes, organized violence, and human trafficking.

Moreover, organizing a group with the purpose of committing a crime was itself deemed a very serious crime. According to the Criminal Act, a person who organized a criminal group, or who joined such group, was supposed to receive the punishment specified for such crime, even when such crime was not committed. The Special Act on Punishment of Violences provided that the leader of a criminal group organized with the aim of committing violent crimes was subject to death penalty or imprisonment for life or at least ten years, even without any specific crimes committed by the leader or his/her members; its principal members, imprisonment for life or at least seven years; and the rest members, imprisonment for at least two years. For sex trafficking, another special act, the Act on Punishment of Arrangement of Sex Trafficking, imposed the same punishment as the previous special act on the organizing deed of a criminal group aimed at committing sex trafficking.

As for property provided for a crime, the Criminal Act stipulates that a court may confiscate a thing which has been used in the commission of a crime. A thing which was sought to be provided for a crime is also subject to confiscation.

The main role of the Korean judiciary was meting out harsh punishment to the criminals and exerting confiscating power, in line with such strict legislative and administrative measures. The strategy was regarded as effective to some extent, judging from the illustrative fact that some of major gangs collapsed and some felonies such as murder and rape decreased by 6 percent in two years during the war against crime. The Criminal Act and those two special acts, which entered into force in 1953, 1961, and 2004 respectively, are still in effect with minor revisions made.

3. Shift to the forfeiture of criminal proceeds

As economic profit has been the prime reason for modern organized crime, the global community has become more aware of the importance of preventing a criminal group from keeping criminal proceeds. Several UN conventions were signed, and the Korean government adopted corresponding measures with those conventions.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 stipulates that each party shall adopt measures to confiscate proceeds derived from narcotic crimes or property worth such proceeds. A relevant Korean act, the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics of 1995, provides that proceeds generated from drug crimes and property obtained from the proceeds are subject to confiscation. The act also focuses on preventing money laundering, saying that anyone who accepts those proceeds knowing them to be illegal profits shall be punishable. In furtherance of mutual legal assistance, the act stipulates that the government may cooperate for the execution of confiscation by the request of other countries.

After the United Nations Convention against Transnational Organized Crime (UNTOC) was adopted with the aim of promoting cross-border cooperation in tackling organized crime in 2000, the Act on Regulation and Punishment of Criminal Proceeds Concealment was enacted in South Korea. The contents of the act with

regard to confiscation, money laundering, and mutual legal assistance are similar to those of the Narcotics Act abovementioned, but the former expands its scope of application to a variety of serious crimes beyond drug crimes.

On the other hand, before the United Nations Convention against Corruption (UNCAC) was signed in 2003, the Act on the Aggravated Punishment of Specific Crimes had already put stringent punishment for bribery, which is still in force. If the amount of the accepted bribe is over 80,000 US dollars, the penalty is imprisonment for life or at least ten years; between 40,000-80,000 US dollars, imprisonment for at least seven years; and between 25,000-40,000 US dollars, imprisonment for at least five years. In addition to the punishment, the bribe is subject to confiscation pursuant to the Criminal Act, which is a congruent legislative effort to curb the possession of illegal profits by criminals.

4. Necessity of forfeiture of property and consideration of property right

The activities of organized criminals in South Korea involve loan sharking, prostitution, drug smuggling, extortion, illegal gambling and gaming, stock manipulation, etc. Organized crime is largely motivated by criminal proceeds as well in South Korea, as in any other country.

The necessity of forfeiture of illegal profits has been well recognized in the Korean judiciary. The confiscation of criminal proceeds has not aroused much controversy, in that the profits are generated from the criminal deeds and therefore there is no legitimate ground for the criminal to hold the profits. The punishment of money laundering has also been less controversial, as the measure is considered an effective means to enforce the forfeiture of criminal proceeds.

The confiscation of property used for a crime, however, has often been the subject of debate. As mentioned above, a court may confiscate a thing which has been used or was sought to be used in the commission of a crime. This type of confiscation can sometimes be excessive infringement on the right to property, especially where the value of a thing used for offense is disproportionately bigger than the value of profits or utility obtained by the offense. A building provided for gambling, or a car used in drunk driving could be such an example.

The principle of proportionality applies here. The Supreme Court of Korea held that all the relevant factors including the following should be considered in deciding the legitimacy of confiscation: how a thing was used in the commission of a crime; how essential the thing was for the commission; how big the victim's damage was; the role and responsibility of the owner of the thing; the motive of the offense; and the possibility of recidivism.

The recent judgment mentioned at the beginning applied the principle of proportionality. As presumed in the case, the confiscation of property could be effective for the deterrence of a crime. It is judges' duty, however, to strike a balance between meeting criminological purpose and protecting the property right, just as a criminal's right to due process should be protected even when harsh punishment is inflicted.

5. Conclusion

A controversial anti-corruption act will enter into effect this September. The Criminal Act and the Act of the Aggravated Punishment of Specific Crimes limit the scope of punishment of corruption offenses to public officials and staff of public organizations. The new anti-corruption act expands the scope to journalists and teachers, and the government is now considering promulgating its relevant enforcement decree which levies a fine against a person who receives a present worth over 40 US dollars regarding his/her job. This legislative effort seems to reflect the public's desire for stronger legal measures to enhance the integrity and transparency of the society.

The Korean judiciary will accordingly continue its effort to impose strict punishment for organized crime, and to confiscate illegal profits and property used for offense, but not at the expense of the defendant's rights to procedural justice and property.