

Publication state: Japan
ISSN: 2423-8368

Publisher: J-INSTITUTE
Website: <http://www.j-institute.jp>

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Peer reviewer
E-mail: editor@j-institute.jp

<http://dx.doi.org/10.22471/protective.2017.2.1.25>

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Characteristics of Legal System Related to SECURITY in Republic of KOREA

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Abstract

In particular, terrorists are recently instilling fear in people with their indiscriminate attacks on unspecified number of targets who are soft targets, as well as hard targets, which suggests that we are living in an era of new terrorism. Furthermore, crimes are becoming more and more violent, intelligent, broadening, and internationalized. Korea has also witnessed a rise in crimes each year. In Korea, public law enforcement organizations and private security industry operate in harmony with each other to maintain crime prevention and security. The purpose of this study was to compressively analyze and introduce the characteristics of legal system related to public law enforcement and private security, the twin pillars of security services in Korea who were responsible for security of the society and safety of citizens.

In a word, Korea's security-related legal system is characterized by dualized operation system.

The legal system of public law enforcement in Korea and its characteristics are as follows.

First, public law enforcement organizations in Korea operate the National Police Agency under the supervision of the Minister of Government Administration and Home Affairs to take charge of security-related works pursuant to the 「Government Organization Act」. In addition, Presidential Security Service was organized which undertake security duties for President, etc.

Second, major laws related to the police include 「Act on the Performance of Duties by Police Officers」, 「Police Officers Act」, 「Police Act」, etc.

Third, public security organizations in Korea are operated under the dualized system in which Presidential Security Service is responsible for Presidential security and police security organization taking charge of security for important personnel of the nation such as Prime Minister, etc.

The legal system related to private security in Korea and its characteristics are as follows.

First, legal system related to private security is dualized. Private security in Korea is operated by dualized system where registered security guards and security guards carry out security duties as prescribed in 「Registered Security Guard Act」 (enacted in 1962) and 「Security Services Industry Act」 (enacted in 1976), respectively.

Second, security for important national facilities is dualized.

Third, efforts have been made to expand 5 types of security services provided as prescribed in the 「Security Services Industry Act」 and to broaden the scope of such security services. Recently, there has been discussions on expanding the scope of security service to include private investigation service, traffic direction security service, civilian military service, etc.

Fourth, security guards, stipulated in the 「Security Services Industry Act」 are operated under the dualized system where ordinary security guards are performing the duties of facility security, escort security, personal security, and machinery security and special security guards are carrying out the duties of special security services.

[Keywords] Security, Public Law Enforcement, Private Security, Security Service Industry Act, Legal System

1. Introduction

Human beings have developed their own capability to defend and protect themselves in order to promote individual physical security after birth. Public law enforcement has made strides with foundation of the states, and in contemporary society, public law enforcement and private security have taken on their respective unique roles in a mutually cooperative manner. The police, which stand at the forefront of public law enforcement, maintain the security of society while individuals are provided with private security services at their own options to ensure their safety. Security service is classified at large into public law enforcement and private security, depending on its provider.

Previously, crime prevention and countermeasures against crimes were recognized as functions of police organizations among national law enforcement institutions. However, private security began to assume a role in preventing crimes in the United States from the mid 19th century, and since then, both public law enforcement and private security have contributed to that role. Now, protection of individuals' lives and properties has generally come to be recognized as the responsibilities of private security[1].

In contemporary society, development of material civilization, selfishness, conflict of cultures, etc., are constantly giving rise to crimes and terrorisms, and consequently, human beings are living in pain and fear.

Korea has established diplomatic relations with more than 190 countries and opened diplomatic missions in 113 countries. To maintain international peace, the army of the Korea Republic has been engaged in peace promotion activities of multinational forces, defense cooperation activities, U.N. peace-keeping activities, etc., thus increasing its status throughout international communities. However, there are terrorist organizations, paramilitary groups, etc., that resort to violence to achieve their political, religious, and ideological goals, along with violent crimes committed for individual and economic reasons[2]. In 2015, 1,861,657 cases of crimes

were committed and 1,500,234 cases involved arrests of criminals. Among them, 5 major crimes (murder, robbery, rape and indecent act by compulsion, larceny, and assault) were 574,021 cases, out of which 411,328 cases involved arrests. Among them, 919 cases were murder incidents[3]. The purpose of this study was to investigate the characteristics of the legal system related to public law enforcement and private security, which are the twin backbones of security services that aim to prevent and respond to crime and terrorism.

2. Public Law Enforcement Organizations and Private Security Industry in Korea

2.1. Public law enforcement and private security

Public law enforcement refers to overall activities performed to promote the benefits of the public and ensure safety and protection of the public based on the authority over law enforcement, such as traffic control, public order maintenance, protection of the lives and properties of individuals, arrest and investigation of criminals, crime prevention, etc[1][4].

Meanwhile, private security refers to overall activities in which private-sector entities(individuals or corporations) provide security services. In other words, private security is not associated with security services provided commonly to all citizens. Rather, they are the activities that aim to provide security services selectively, such as crime prevention, prevention of damage to properties, personal safety, etc., depending on specific clients or remuneration offered by customers, for commercial purpose. Although public law enforcement and private security have their unique roles to play, they have certain purposes in common, such as crime prevention, property protection, crime reduction, order maintenance, and risk prevention[1][5][6].

2.2. Public law enforcement organizations and private security system in Korea

Public law enforcement represents the security activities of governmental organizations that enforce national public authority. The most typical public law enforcement organizations in Korea include the National Police Agency and Presidential Security Service.

The Korean National Police Agency consists of 16 persons in charge, 32 departments, 9 divisions, 8 bureaus, and 1 deputy general manager. There are 17 local police agencies in special cities, municipalities and provinces in order to ensure division of police duties locally. In addition, there are 252 police stations, 516 district police divisions and 1,479 police sub-stations under the local police agencies. As of late 2015, there are 113,077 police officers nationwide and the number of police officers per resident is 456 across the country[3].

The Presidential Security Service was created on December 14, 1963 to take charge of President's security, and 「Presidential Security Service Act」 was enacted on December 17, 1963.

The Presidential Security Service has the Chief Officer of the Presidential Security and Deputy Managing Director.

It has subordinate organizations such as the Planning & Management HQ, Protection HQ, Area Security HQ, Intelligence and Security HQ, Security Communication Logistics HQ, and operates the Security Training Institute, an affiliated organization, which specializes in security training and education[7].

Meanwhile, modern private security industry in Korea dates back to early 1960s when private security service began to be provided for the Eighth United States Army. In 1976 the Security Industry Act was enacted, paving the way for the private security industry to be integrated into the mainstream. When the act was established, only 10 security service provided services but the demand increased during various international events such as Asian Games in 1986, Seoul Olympics in 1988, FIFA Korea-Japan World Cup in 2002, etc., and as a result, have seen a rise in the demand for security services amid the improvement of awareness in the society[8][9]. Moreover, se-

curity service has joined the ranks of the industries growing rapidly to date, spurred by the desire for protection from various crimes and terrorist attacks. As of the end of 2016, as many as 4,570 enterprises have been licensed and operating, while 147,049 security guards are working in security service enterprises.

In addition, the number of registered security guards, employed by petitioners (who have been notified of deployment of registered security guards upon their request), stands at 1,866 in state agencies, 7,351 in local governments, 2,212 in state-owned enterprises, and 1,559 in private-sector companies, as of 2015[3].

3. Structure and Characteristics of Legal System Related to Security in Korea

3.1. Legal system for public law enforcement

3.1.1. Public law enforcement organizations

The National Police Agency is under the Minister of Government Administration and Home Affairs to supervise the security affairs in accordance with Paragraph 4, Article 34 of 「Government Organization Act」 in Korea. Additionally, Presidential Security Service was formed to take charge of the security and other duties for the President pursuant to Paragraph 1, Article 16 of the same Act[10].

3.1.2. Major laws and systems related to the police

Major police-related laws include the 「Act on the Performance of Duties by Police Officers」, 「Police Officers Act」, 「Police Act」, etc. Besides, there are laws, such as 「Act on the Assistance to the Performance of Police Duties」, 「Act on the Persons Performing the Duties of Judicial Police Officials & the Scope of Their Duties」, 「Act on the Establishment and Operation of Auxiliary Police Companies」, 「Act on Establishment of Korean National Police University」, 「Police Mutual Aid Association Act」, 「Framework Act on Health, Safety, and Welfare of Police Officials」, 「Act on

the Regulation Pertaining to Uniform and Equipment of the Police」, etc.

According to the Korea Law Information Center[10], the 「Act on the performance of Duties by Police Officers」 was enacted in 1953 to set forth the provisions necessary for performance of duties by police officers (which only correspond to national police officers) for protection of the rights and freedoms of the public and maintenance of social order. The scope of police officers' duties, stipulated in Article 2 of the 「Act on the Performance of Duties by Police Officers」 covers the activities that aim to ① protect the lives, bodies and properties of the public ② prevent, suppress and investigate the crimes ③ provide security service, guard major personnel, and carry out anti-espionage and anti-terrorism operations ④ collect, generate and disseminate security information ⑤ control the traffic and prevent traffic hazard ⑥ cooperate with foreign government agencies and international organizations ⑦ and maintain security of the public and social order.

3.1.3. Dualized system of major laws and systems related to public security

Security organizations in each country vary, depending on political economic, and cultural conditions, etc[11]. Operating under the dualized system, public security organizations in Korea have been divided into Presidential Security Service responsible for Presidential security and police security organizations responsible for protecting major personnel of the nation.

The 「Presidential Security Act」 aims to define the security organizations, scope of duties, and other necessary provisions in order to carry out security for the President and others effectively. Persons eligible for security service by Presidential Security Services pursuant to Article 4 of the Act are ① The President and his/her family members; ② The President-elect and his/her family members; ③ former President in whose case ten(10)years have not passed since he/she left office, only if the provision of security service is not against his/her will, and his/her spouse: Provided, that the security service

period shall be five(5)years if a President resigns from office before the end of his/her term of office or he/she dies in office, and the security service period shall be five(5) years after he/she dies if he/she dies after he/she resigns from office, but shall not exceed ten(10) years from the date of resignation; ④ An acting President and his/her spouse; ⑤ The head of the state or government of a foreign country visiting the Republic of Korea and his/her spouse; and ⑥ Other domestic or foreign important figures for whom the Chief considers that security service is necessary.

Security services for major personnel, such as Prime Minister, etc., are provided by the Security Bureau under the National Police Agency[11]. In accordance with Article 13 of the 「Act on the Organization of Police Agency and its Affiliates」, the Director of the Security Bureau under the Police Agency "is required to ensure segregation of functions in relation to establishment of guard/key personnel protection planning and guidance/instructions".

In addition, pursuant to the Enforcement Rule of the 「Act on the Organization of Police Agency and its Affiliates」, the Security Division, Crisis Control Center, Security Guard Division, and Aviation Division are organized in the Security Bureau. Here, the Director of Security Guard Division is required to ensure segregation of functions in relation to ① establishment of security planning and concerned guidance/instructions and ② protection of key personnel.

3.2. Private security system

3.2.1. Dualized system of laws pertaining to private security

The entities that provide private security in Korea are the registered security guards deployed pursuant to 「Registered Security Guard Act」 and security guards deployed as prescribed in 「Security Services Industry Act」, which are operated under the dualized system.

The Ministry of Government Legislation published the background that led to the enactment of the Registered Security Guard Act

(enacted as Law no. 1049) on April 3, 1962, indicating, “The registered security guard system aims to promote resolution of short-fall of the police force and ensure effective protection and public security for buildings, etc., by establishing a system that deploys registered security guards upon the request of client for deployment thereof at the cost of the client.”

The 「Security Services Industry Act」 was enacted and enforced for security services such as security protection for general facilities, etc. This Act was enacted as Law No. 2946 on December 31, 1976. The Ministry of Government Legislation stated the purpose of enactment of this Act, indicating, “The purpose of this Act is to set forth provisions pertaining to contracted security services and ensure appropriateness of security services entrusted to any third party for the facilities such as industrial facilities, public facilities, offices, and others which require security protection” [10].

3.2.2. Dualized system of security for important facilities of the nation

Unlike ordinary facilities, the personnel deployed to important facilities of the nation are the ‘registered security guards’ and ‘special security guards’ who are the twin pillars of security protection for key facilities across the country.

In accordance with the 「Registered Security Guard Act」, registered security guards are required to carry out their duties as the police officers stipulated by the 「Act on the Performance of Duties by Police Officers」 with the scope of security protection for concerned security zone under the supervision of the police superintendent having jurisdiction of organizations/facilities or business place where registered security guards are deployed and under the supervision of the client(who made request for and subsequently has been notified of such deployment of registered security guards)

Special security guards, stipulated by the 「Security Services Industry Act」 refer to the personnel carrying out special security duties. Here, special security duties mean the duties that aim to provide security protection

for and prevent theft, fire, and other risks in national security facilities designated by Director of National Intelligence Service among the facilities such as airport(including aircrafts), ports, nuclear power plants, etc., along with important national facilities designated by Minister of National Defense pursuant to the 「United Defense Act」. The problem of dualization has hindered the improvement in efficiency, uniformity and consistency of security services and has given rise to difficulties in directing and supervising security duties[12].

3.2.3. Provision of 5 types of security services pursuant to 「security services industry act」 and efforts to expand the scope of security duties

Security service duties, required to be performed under the 「Security Services Industry Act」 at the time of its enactment in 1976 in Korea, were classified into facility security and escort security as entrusted to third party. Subsequently, personal security was added in 1995 which resultantly broadened the category of security under the Act into 3 types. Furthermore, machinery security service and special security service were added in 2001 and therefore 5 types of security services can be currently provided.

Recently, there has been a mounting demand for expansion of private security industry at a social level. In particular, there has been a heated debate over the introduction of private-sector investigation service (detective business) among relevant organizations, including the national police agency, private investigation organizations, and academic circles, as well as government officials. Many legislative proposals have been proposed by legislators. One of the opinions suggests integration of private investigation into a segment of security service business (private-sector security industry).

3.2.4. Dualization of security guards pursuant to 「security services industry act」: ordinary security guards and special security guards

Security guards, stipulated in 「Security Services Industry Act」 are employees hired

by a security service business operators approved to carry on the security service business. Here, ordinary security guards refer to those carrying out facility security, escort security, personal security, and machinery security.

In addition, special security guards refer to those carrying out special security duties.

As private security personnel have the status of civilians, they can only exercise the rights same as those conferred upon ordinary citizens. This includes only self-defense, emergency evacuation, self-rescue, and arrest of criminals caught in the act of crimes, etc[13]. In other words, special rights are not conferred upon security guards in Korea. However, registered security guards and special security guards have the privilege of carrying weapons(pistols and rifles) in a limited manner.

4. Conclusion

In a word, Korea's security-related legal system is characterized by dualized operation system.

The legal system of public law enforcement in Korea and its characteristics are as follows.

First, public law enforcement organizations in Korea operate the National Police Agency under the supervision of the Minister of Government Administration and Home Affairs to take charge of security-related works pursuant to the 「Government Organization Act」. In addition, Presidential Security Service was organized which undertake security duties for President, etc.

Second, major laws related to the police include 「Act on the Performance of Duties by Police Officers」, 「Police Officers Act」, 「Police Act」, etc.

Third, public security organizations in Korea are operated under the dualized system in which Presidential Security Service is responsible for Presidential security and police security organization (Security Bureau of the National Police Agency) taking charge of security for important personnel of the nation such as Prime Minister, etc.

The legal system related to private security in Korea and its characteristics are as follows.

First, legal system related to private security is dualized. Private security in Korea is operated by dualized system where registered security guards and security guards carry out security duties as prescribed in 「Registered Security Guard Act」 (enacted in 1962) and 「Security Services Industry Act」 (enacted in 1976), respectively.

Second, security for important national facilities is dualized. The entities that carry out security duties for important national facilities are the 'registered security guards' and 'special security guards'. Both represent twin pillars of security for important national facilities.

Third, efforts have been made to expand 5 types of security services provided as prescribed in the 「Security Services Industry Act」 and to broaden the scope of such security services. In Korea, personal security was added in 1995, followed by addition of machinery security service and special security in 2001, since the 「Security Services Industry Act」 had been enacted. As a result, 5 types of security services are currently provided.

Recently, there has been discussions on expanding the scope of security service to include private investigation service[14], traffic direction security service[15], civilian military service[16], etc.

Fourth, security guards, stipulated in the 「Security Services Industry Act」 are operated under the dualized system where ordinary security guards are performing the duties of facility security, escort security, personal security, and machinery security and special security guards are carrying out the duties of special security services.

Academic societies in Korea are calling for improvement in legal system for advancement of private security. Security instructor system, which provided guidance, supervision, and education to security guards, was introduced through amendment of the 「Security Services Industry Act」 in 1995 in

a bid to promote improvement of qualification of security guards[17]. Research is conducted vigorously in various areas, such as education/training of security guards[18][19][20] which aims to enhance quality of specialized security service, the security instructor system, discussion on concerned regulations, authority granted to security guards, expansion of duties for security service, etc.

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