

Publication state: Japan
ISSN: 2423-8767

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

Corresponding author
E-mail: shik71@hanmail.net

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

<http://dx.doi.org/10.22471/law.2017.2.2.01>

© 2017 J-INSTITUTE

Improvement of the Citizen Participation in CRIMINAL Trial in KOREA

Kim Burm-shik

Seonam University, Asan, Republic of Korea

Abstract

According to 'Act on Citizen Participation in Criminal Trials', Citizen Participation in Criminal Trials took effect from 1st of January, 2008 in Korea. Korea have accumulated 10 years of experience, and reached the present.

Commonly, we call Jury participation criminal trial as Citizen Participation in Criminal Trial. But Citizen Participation in Criminal Trial is let citizen participate as an Juror to suggest opinion of recognition or right of punishment. Therefore, it could increase the citizen's reliability and democratic legitimacy of judicial.

Especially, this act can make understandable trial to both dependent and victim by let ordinary non-legal professional people to participate a criminal trial. This could make a n effect on faith and validity of the trial.

However, this act have been 9 years in Korea and going to 10th year. And it is time to reconsider this act, that it really effect as we expected when we started. This process is necessary work required for the development and proper settlement of this act.

The national involve Judicial Council of Supreme Court in Korea, already work on this process from 2008 to 2012; after the analysis, they confirm the final form. On the other hand, Ministry of justice legisla e a notice for twice.

This study is look for a procedures of Citizen Participation in Criminal Trial, accomplishment of enforcement and development.

[Keywords] *The Citizen Participation in the Trial, Amendment of Public Justice Participation Committee, Binding Effect of Jury's Verdict, Law-Related Education for Citizen, Jury System*

1. Introduction

In Korea, the National People's Participation Trial was held on January 1, 2008 under the "Act On Citizen Participation In Criminal Trials", which has accumulated about 10 years of experience. In the case of the public participation trial, the jury selected among the people participates in the criminal trial to present the opinions on the fact recognition and the control of the brotherhood, and the democratic legitimacy of the judicial system and the It was introduced to increase the credibility of the Korean people. In particular,

this system is expected to increase the public's understanding of the judiciary and increase the confidence in the justification of the trial if the general public, who is a non-expert of the law, participates in the criminal trial and realizes a trial that can be grasped by the defendant or victim It seems to be effective[1][2].

The Citizen Participation Trial was not a definite introduction at the time of the first introduction in 2008 but decided to finalize the Citizen Participation Trial System after the implementation of 5-6 years. Accordingly,

the Supreme Court's National Judiciary Participation Committee confirmed and finalized the final form at the eighth meeting on March 6, 2013, by analyzing the progress of the public participation trial conducted for five years from 2008 to 2012. However, the Ministry of Justice revised or added the final draft of the National Judiciary Participation Committee on October 11, 2013, and announced two final legislative amendments to the Ministry of Justice. On June 12, 2014, the government submitted an amendment based on the Ministry of Justice to the 19th National Assembly, but it has been abolished due to the expiration of the 19th National Assembly. In this article, I am criticizing this law and amendment in view of the fact that the "Act On Citizen Participation In Criminal Trials[3]" and the amendment of the abolished Justice Department are not in line with the purpose and purpose of the public participation trial[4]. I would like to examine the development of the public participation trial.

2. Problems Raised after the Citizen Participation Trial

The Supreme Court has consistently analyzed the situation during the trial period of the Citizen Participation Trial. The analysis of the period from January 1, 2008 to December 31, 2011[5], as well as public participation trials in other publicly available materials, It can be pointed out that it must be improved and improved at the same time.

2.1. The implementation rate of the citizen participation trial

As the implementation rate of the Citizen Participation Trial is too low, it is necessary to solve the cause of poor implementation rate. During the above period, out of the total 21,912 cases covered, 574 cases were treated as the Citizen Participation Trial, showing 2.62%. Only 1490 cases(6.8%) of the total cases were received as the Citizen Participation Trial, 582 cases(2.66%) were withdrawn and 274 cases(1.25%) were excluded. Most of the exclusionary decisions were made under Article 9 (1) (3) of the Citizen Participation Trial.

2.2. Problem of bad judgment

It is the concern of bad judgment in accordance with the due date which ends in one day or two days. 527 cases(91.8%) out of the 574 cases that were treated as the Citizen Participation Trial completed all the procedures except one sentence in one day, only 47 cases (8.2%) took two days.

2.3. Problem of the severity and fragility of the verdict

The jury's verdict and guilty verdict require the unity of the jury, and even if they reach a verdict, they are merely advisory. Thus, it is necessary to change the structure of the guilty verdicts to a majority method, to give a speed to the verdicts, and to change the way the jury is involved in sentencing. In the case of 90.6% of the 570 cases, the verdict and the judgment were consistent with 520 cases, and in the case of 92.6% of the cases, the majority of the sentences of the jury and sentences imposed by the judge were close. By 2012, the jurors' verdict and court rulings were concluded in 782 cases, 92.2% of 848 cases involving public participation in the five years from 2008 to 2012. On the other hand, in the jury's verdict of innocence, the judge ruled guilty of seven cases in 2008, six cases in 2009, 13 cases in 2010, 24 cases in 2011, 12 cases in 2012, 62 cases, There were four cases in which the judge ruled innocence[6].

2.4. Problem of high appeal rate

This is a high appeal rate for the Citizen Participation Trial that faded the meaning of public participation trials. Of the 514 cases that were treated as the Citizen Participation Trial, 491 cases were appealed and the appeal rate(85.5%) was higher than the appeal rate (68%) when the cases were treated as ordinary trials. Of these, the defendant's appeal rate(including the case of both appeals) was 66.6%, which was somewhat higher than the defendant's appeal rate of 59.4% in the general trial, while the appeal rate(including both appeals) The appeal rate in the trial was more than twice as high as 23.3%.

3. Critical Review of the Improvement Proposal of the Citizen Participation Trial

Based on the results of the public participation trials mentioned above, the Supreme Court's National People's Justice Participation Committee finalized and finalized the public participation trial system at its eighth meeting on March 6, However, despite the procedural problem[4], the Ministry of Justice notified the final draft of the National Assembly on the Participation of the National Assembly on the revision of the Act on Participation in Criminal Justice[7]. After the criticism that the jury of the public participation trial is shaken in the local emotion and the emotion in the case of the public election law violation case[8]. And on June 12, 2014, the government submitted an amendment based on the Ministry of Justice to the 19th National Assembly, but it has been abolished due to the expiration of the 19th National Assembly and is now under discussion at the 20th National Assembly. In the following section, we will look at the problems raised in each of these areas and how they are developed.

3.1. Improvement of binding power of verdict

The amendments to the National People's Judicial Participation Committee and the Citizen Participation Trial of the Ministry of Justice do not recognize the binding power of the jury verdict in common, but merely give the ambiguous "de facto bridging force". This is because judging from the idea that constitutional reconciliation is not feasible when the jury's judgment is binding, and when the decision of the unskilled jurors is decided by the jury, it is considered to be due to self-superiority of the judiciary. However, these amendments have limitations in solving the distrust of the existing judicial system and securing the democratic legitimacy of the judicial system. Article 27 (1) of our Constitution Law states that "all citizens have the right to a trial under the law by a constitutional law and a law." This fundamental right constitutes a constitutional guarantee of the defendant's right to a trial by a judge, but it is not necessarily the case that a judicial trial

alone guarantees the defendant's fair trial. In other words, the fairness of a trial can be achieved not only by a judge who is guaranteed by law, but also by a jury trial by the same fellow citizen. Also, since the life of a criminal trial is fair, the proper procedure in a criminal case can not be achieved without a fair trial. However, the fairness of a trial can not be guaranteed only by a judge who guarantees independence and term of trial[3].

In addition, the fears of misjudgment that may arise because jurors are non-experts have already been resolved through the results of five-year the Citizen Participation Trial. In other words, according to the Supreme Court's data, the verdicts and judgments of 782 cases, 92.2% of the 848 cases, were concluded in five years, which is enough to eliminate such concerns. The essential reason for admitting public participation in justice is to overcome the limitations of the trial by professional judges and allow the public to participate as jury members to realize their core concerns about the judiciary[4].

3.2. Problem of the ministry of justice that excluded political events from the citizen participation trial

The revision bill of the Ministry of Justice (Article 5, Paragraph 1, Subparagraph 1 of the Ministry of Justice) is a case of violation of the Public Election Law(Article 32 (1) 6 of the Court Order Act) This is not valid considering that the purpose of the public participation trial is to guarantee the right of people to participate in the judiciary. In other words, the purpose of the legislature is to make certain events not under the sole judge but under the jurisdiction of the consensus, as this is a serious event that requires the experience of the judges and consensus of the judges. Therefore, because it is necessary to reflect the will and common sense of the people about such a serious event, it is legislated as a subject of public participation trial. In the case of "power crime" such as political crime, civil service crime, election crime, economic crime, etc., the Ministry of Justice's proposal is against the institutional purpose of public participation trial It should be deleted[4][9].

3.3. The introduction of some mandatory measure

As with the amendment, it is only feasible to adopt some form of compulsory caution based on the application principle, provided that the court and the attorneys are willing to act fairly. However, considering the background of the introduction of the system of public participation trial due to the mistrust of judiciary, and the self-determination attitude of the courts and prosecutors in the process of legislative and institutional settling, some of the compulsions that the final draft introduces are based on overly optimistic expectations and assumptions I will not. In other words, the compulsion proposed by the amendment is meaningful only in terms of the limitation of the applicant's right of application, and the substantive merely divides the right of referral of procedure by pluralizing the right to refer the procedure to the court and the prosecutor[9].

In the end, in view of the subtle understanding and dynamics between the trial participants in relation to the referral of the people's participation trial, it is not entirely up to the judgment of the trial participants to decide whether or not to submit the proceedings, It is considered desirable to enforce or mandate the procedure[9].

3.4. Improvement plan with appel

Since the trial of the people's participation in Korea can appeal regardless of whether or not the first judgment is a crime, the first trial is not final. Rather, rather than the appeal, the trial is conducted by a professional judge. However, in all jurisdictions, an appeal against a verdict of innocence is not, in principle, allowed by the principle of unilateralism and the principle of prohibition of dual risk. The defendant is only able to appeal the guilty verdict on the basis of a violation of the law. In general jurisdictions, in the case of an innocent verdict, the first trial jury trial is final, and in the case of a guilty verdict, the appeal is based on the principle of law.

Of course, it may be possible to recognize an appeal against the decision of the People's Participation Tribunal in terms of remedies.

However, the recognition of the appeal of the innocent conviction of a jury's unanimity can be attributed to the fact that the doctors of a majority of the jurors representing the people can be overturned by a few professional judges. Therefore, it is reasonable that the prosecutor's appeal against the juror's unanimous decision is prohibited[4].

3.5. Improvement plan of reasons for excluding verdict

According to the amendment, the courts have substantial judgments and decision-making powers throughout the proceedings of the Participatory Court, and in this process the jury is supposed to have only a subsidiary position and role. In this situation, the amendment also includes the exclusion of jury verdicts. However, the reason for exclusion includes the case of 'violation of Supreme Court precedent', which in effect declares abandonment of the Citizen Participation Trial.

Because, if there is a considerable reason, the case of the Supreme Court can be changed. Also, there may be cases where the case should be changed due to the change of social awareness. In addition, although Korea is not a case law country that recognizes the legal effect in the case, excluding the verdict for such a reason recognizes the legal power of the Supreme Court case. It would be an outcome of the court's authoritarian and authoritarian idea that it is not necessary to respect the jury's verdict that the revision bill violates the Supreme Court's case even though the revised bill admits the jury's verdict. Therefore, it is reasonable to remove the part of the Supreme Court precedent in the exclusion grounds[4][9].

4. Conclusion

Through the Citizen Participation Trial in Korea, we have opened a new chapter in the history of our judicial affairs in that the people's mistrust of the judiciary has been solved and democratic control by the people has become possible. It is encouraging that the Citizen Participation Trial is a place for education to teach democracy to the people and it is

positive that the problem of 'whole courtesy' and 'genocide guilty guilt' is not posed in the case of participatory trial. However, unlike the anticipation that the application will be overcrowded in the first place, there are also problems such as the application rate is lower than the case and the actual withdrawal rate is not so high. In addition, the appeal rate was higher than that of the general trial. In order to solve these problems, the Supreme Court's National People's Judicial Participation Committee and the Ministry of Justice have proposed revisions of each, but the above - mentioned problems are pointed out. In retrospect, compared to a country where we have experienced jurors for hundreds of years, the system of public participation trials is so unfamiliar that many problems now appear. However, since it is impossible to overlook such a problem, efforts to resolve it in a short period of time are emerging.

However, at this point, it is important to overcome the problem, not to create an eclectic improvement plan as a quick solution, but to form a consensus that meets the purpose and purpose of the Citizen Participation Trial. In this process, I think that the merits of 10 years after the implementation of the Citizen Participation Trial can be maximized and the model of the Korean-type People's Participation Trial which can overcome the problems can be settled.

5. References

5.1. Journal articles

- [1] Kim BS. The Interim Appraisal of the Civil Participation in Criminal Jury Trial. *Korean Criminological Review*, 83, 311-348 (2010).
- [2] Cho IH. Die Untersuchung uber das koreanische Geschworenensystem und die Befugniss des koreanischen Geschworenen - Besonders die Moglicherweise Grunde fehlerhafter Entscheidungen. *Korean Journal of Comparative Criminal Law*, 15(1), 259-290 (2013).
- [3] Lee SK & Cho YI & Lee HM. Critical Analysis on the Revised Bill of the Act on the Civil Participation in a Criminal Trial: Focused on

the Empirical Analysis. *Journal of Criminal Law*, 26(3), 255-280 (2014).

- [4] Kim BS. A Comparative Legal Study on the Final Form of Civil Participation in Criminal Trials. *Journal of Criminal Law*, 26(3), 229-253 (2014).
- [9] Kim BS. A Critical Study on the Final Form of Peoples Participation Trial System. *Journal of Criminal Law*, 26(4), 165-185 (2014).

5.2. Additional references

- [5] Court Administrative Office. 2008-2011 Analysis of the Citizen Participation Trial Performance (2012).
- [6] <http://shindonga.donga.com> (2013).
- [7] DOJ, Notice No.2013-221 <http://www.moj.go.kr> (2013).
- [8] DOJ, Notice No.2013-288 <http://www.moj.go.kr> (2013).

Author

Kim Burm-shik / Seonam University Professor
 B.A. Dongguk University
 M.A. Dongguk University
 Ph.D. Sungkyunkwan University

Research field

- Problem of Criminal Mediation in Korea -Does Criminal Mediation in Korea Based on Restorative Community, *Korean Journal of Victimology*, 23(3) (2015).
- A Study on the Necessity of the Immunity and Sentence Reduction System for Judicial Cooperators, *Korean Journal of Comparative Criminal Law*, 18(4) (2016).

Major career

- 2010~present. Seonam University, Profrrsor.
- 2017~present. International Society for Justice & Law, Member.