AN EXAMINATION ON JURIES' INDEPENDENCE FROM THE INFLUENCE OF PROFESSIONAL JUDGES IN KOREAN JURY SYSTEM

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The System for Citizen Participation in Criminal Trials (hereinafter referred to as the "CPCT") introduced to Korea in 2008 is known as a mixture of the U.S. jury system and European lay judge systems. It is apparent that, it has superficially more in common with the former than with the latter. When viewed from behind the scenes, the Korean system shows a greater resemblance to the lay judge system. The current CPCT contains a number of factors that might pose a serious threat to the jury's independence due to the influence of professional judges. The purpose of the Act ultimately depends on the autonomy and independence of the jury. A criminal trial system that welcomes citizens' participation is indispensable for judicial reform in Korea. However, to raise "democratic legitimacy" and "confidence" in criminal trials, a pure "jury system" is, in the opinion of the author, more effective and appropriate for Korea than the lay judge system. It would better serve the original purpose of the CPCT to never allow judges to be present at deliberations by jurors. Verdicts should be given "legal binding power", rather than only ambiguous "practical binding power". It is not necessary that, jurors take part in discussions on sentencing after verdicts.

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INTRODUCTION

The system for citizen participation in criminal trials was introduced to Korea in 2008, and bears a strong resemblance to Japan's jury system that was maintained nearly until the end of WWII (1928-1943). Based on the concern that, the participatory trial system would be contrary to the Constitution of the Republic of Korea, the government stubbornly insists on maintaining the existing law that adopts the principle of defendant application and does not recognize verdicts as legally binding. As such, there is no denying that, the Korean system could end up following the same path as the Japanese jury system prior to the end of WWII.

Korea's system for citizen participation in criminal trials (hereinafter referred to as the "CPCT") is known as a mixture of the U.S. jury system and the lay judge systems of Germany and France, but it is apparent that, it has superficially more in common with the former than with the latter. This is evident from the facts that, citizens participating in criminal trials are collectively referred to as a "jury" in the Act on Citizen Participation in Criminal Trials (hereinafter referred to as the "Act"), and that within the courtroom seats for the jury are separate from those for judges. When viewed from behind the scenes, however, the Korean system appears to bear a greater resemblance to the lay judge system. Regardless, the CPCT has assumed an experimental and transitional character, and does not appear to be a fully mature system. Furthermore, the proposed revision, or the final form plan¹, which is being put before the National Assembly, is no different from the existing law. Should this revision bill be passed, it would be difficult for the CPCT to recover from its tarnished image as a mediocre and experimental system at best.

¹ For details, see Jong-Sik Choi, *Kankokuniokeru Kokumingsangyosaibanseidono Saisyukeitai—Kokumingsabeopchamyoiinnkaino Saisyukeitaianwo Chusinntosite (The Final Form of the System for Citizen Participation in Criminal Trials in Korea: A Study of the Final Form Plan by the Committee for Citizens' Participation in the Judicial System)*, 85(10) HÔRITSU JIHÔ REV. 88-94 (September 2013).

Such being the case, the current CPCT contains a number of factors that might pose a serious threat to the jury's independence due to the influence of professional judges. The success of Article 1² of the Act ultimately depends on the autonomy and independence of the jury. Should their autonomy and independence be compromised, the very meaning of the system's existence would be diluted. The single largest factor in the current CPCT that would be most likely to hinder a jury's autonomy and independence is the influence on the jury's deliberations and verdicts exerted by judges who are involved in the same trials. This is because judges are allowed to participate in deliberations by the jury and to state their opinions, and because they are able to reject any verdict that the jury might have reached.

This paper is intended to provide a brief overview of the CPCT and how it is being applied, to review issues involving the independence of the jury's deliberations and verdicts, and to present a plan to improve them.

I. SYSTEM OVERVIEW

A. *Requirements for Eligible Cases*³

1. The Case Must Involve a Crime Stipulated by Law⁴

Eligible Cases for a participatory trial are as follows: (i) cases falling under the jurisdiction of a collegiate panel under Article 32 (1)⁵ (excluding subparagraphs 2 and 5) of the Court Organization Act; (ii) cases of attempting, abetting, aiding, preparing, or conspiring to commit an offense among cases falling under (i) above; or (iii) cases falling under (i) or (ii) above and also those falling under Article 11 of the Criminal Procedure Act, which are consolidated for trial as a single case⁶.

² (Purpose) The purpose of this Act is to clarify the power and responsibilities of citizens who take part in criminal trials under the participatory trial system that is hereby adopted to raise democratic legitimacy and confidence in judicial process and to provide for special cases for trial procedure and other necessary matters.

³ For details, see Jong-Sik Choi, *Korean Citizen Participation in Criminal Trials: The Present Situation and Problems*, 42 INTERNATIONAL JOURNAL OF LAW, CRIME AND JUSTICE 89-92 (2014).

⁴ Article 5 of the Act.

⁵ Cases subject to capital punishment, life or short-term (one year or longer) imprisonment with or without prison labor (exceptions may apply).

⁶ Cases where two or more offenses have been committed by one person, cases where two or more persons have jointly committed the same offense, cases where two or more persons have committed individually offenses at the same time and at the same place, offenses of harboring an offender, suppression of evidence, perjury, false expert testimony or interpretation, or offenses relating to the stolen goods, and the principal offences thereof.

2. The Defendant Needs to Apply for a Participatory Trial⁷

In Korea, no case will proceed to a participatory trial unless the defendant applies for one (the principle of defendant application). The Act⁸ declares that, “Every person has a right to a participatory trial, as provided by this Act” but, as it has become clear in actual practice, only a small percentage of defendants apply for it. Given the present situation in which defendants may choose not to exercise this right or, even if they do, the court may reject the application, there is a natural limit to this system. It is often said that, the principle of defendant application was introduced to avoid infringement of “the right to be tried ... by judges qualified under the Constitution and the Act” in Article 27 (1) of the Constitution, yet this is the primary factor obstructing the purpose of the CPCT. While adhering to the principle of defendant application in the existing law, the revision bill submitted to the National Assembly in June, 2014 allows for forced implementation of a participatory trial upon application by a prosecutor; however, this cannot serve as a fundamental solution to the issue. Because it is to be implemented forcibly, there remains room for disputes over possible violation of the Constitution. Furthermore, there is no small chance that prosecutors might not exercise their right of compulsion fairly or will abuse their authorities.

3. Absence of a Court Decision to Exclude⁹

Even if a defendant takes advantage of his or her right to apply for a participatory trial, such a trial will not be held if the court decides to reject the application, meaning that, the court is granted considerable leeway in relation to its right to reject such applications even when such participatory trials are recognized as the defendant’s right. This is the second factor that hinders the original purpose and objectives of the CPCT. Looking at the actual situation, the number of applications rejected by the court is equivalent to 42.5%¹⁰ of the number of participatory trials granted. Given that about 78% of the applications were rejected on the grounds of the provision¹¹, which is rather abstract and thus allows the court to

⁷ Article 5 (2) of the Act.

⁸ Article 3 (1).

⁹ Articles 9 and 11 of the Act.

¹⁰ Daebeopwon Sabeopjiwonsil [Legislation Support Center of the Supreme Court], 2008 NYEON ~ 2014 NYEON GUNGMINCHAMYEOJAEPAN SEONGGWABUNSEOG (ANALYSIS REPORT OF CITIZEN PARTICIPATION TRIALS FOR 2008-2014) 6 (May 31, 2015).

¹¹ Article 9 (1) 4 of the Act.

comprehensively reject applications, one might suspect that, the court is abusing its authority. Despite these circumstances, far from reducing the reasons to make rejection decisions, the revision bill under discussion at the National Assembly seeks to add even more reasons and to establish the right of prosecutors to request rejection decisions. Needless to say, for the CPCT to be put to better use, it is necessary that, the scope of the court's right to reject defendants' applications be kept to a minimum.

B. Number of Jurors

The number of jurors differs depending on the type of statutory punishment involved¹². Nine jurors participate in participatory trials for an eligible case where the statutory punishment is the death penalty or life imprisonment with or without prison labor, while seven jurors participate in all cases other than those set forth above, provided that, a court may have five jurors if the defendant or defense counsel admits essential elements of prosecuted facts during the preparatory proceedings. Notwithstanding the foregoing, a court may make a decision on its own to determine the number of jurors, either seven or nine, only if it finds that extraordinary circumstances exist in view of the substance of a case, and if the prosecutor and the defendant or defense counsel give their consent. The revision bill suggests that, the five-juror system be abolished with only the nine- and seven-juror systems being retained, given the fact that, the five-juror system is being adopted for less than 10% of all cases in actual practice.

C. Deliberation and Verdict

The presiding judge must, upon closing the pleadings and arguments, explain to jurors in court about essential points of prosecuted facts, applicable provisions of Acts, essential points of pleadings and arguments of the defendant and defense counsel, admissibility of evidence, and other significant matters¹³. In such cases, an explanation about essential points of evidence may be also given, if necessary. Jurors taking part in a trial then begin to deliberate on whether the defendant is guilty or otherwise after hearing the aforementioned explanations, and may deliver a verdict if it has been reached unanimously. At that time, if a majority of jurors requests it, the jury may hear the "opinions" of the judges who have taken part in the trial.

These provisions might have been included lest deliberations by jurors

¹² Article 13 of the Act.

¹³ Article 46 of the Act.

reach a standstill, but they also allow judges to participate in the deliberations by stating their “opinions”, rather than providing mere “explanations”. As such, there is a risk that, they could have a decisive influence on the jurors’ decision-making process. This is the third factor that can seriously impair the independence of participatory trial jurors. Nevertheless, the revision bill does not make any changes except that, the “opinions” of judges participating in deliberations are replaced by “explanations”.

It can be thought of as an inevitable consequence of such a system that, judges are not bound by the verdict of the jury. This is definitive evidence indicating that, this is still an experimental system, and that the law does not recognize the independence of jurors. Nevertheless, the revision bill makes only an ambiguous alteration (“verdicts shall be respected”) and still fails to render verdicts legally binding.

II. PRESENT STATE

A. Implementation

Table 1 shows how the CPCT has been implemented from 2008 to 2014¹⁴. The number of participatory trials has been gradually increasing with each passing year. The number of decisions by the court to exclude, on the other hand, has decreased gradually, but the total number of such decisions was still about half the number of participatory trials granted. Another conspicuous point here is that, the number of withdrawals by applicants was almost equal to the number of participatory trials granted. In most of the cases, defendants withdrew their applications due to a lack of understanding of the system or out of fear that such trials might be to their disadvantage¹⁵.

B. Verdicts

Table 2 shows verdicts given by jurors. Unanimous verdicts account for 68.5% (1,003 cases) of the total, with 61.6% (902 cases) being guilty verdicts and 6.9% (101 cases) being not guilty verdicts. The percentage of “not guilty” verdicts was more than 10% during the seven-year period, but increases to 28.5% if “partially not guilty” verdicts are included. This is a very high percentage relative to the approximately 3% of “not guilty” verdicts in first trials of general sessions. Even allowing for the fact that, as

¹⁴ Choi, *supra* note 3, at 94-98.

¹⁵ Dong-Hee Lee, *Gungminchamyojaepanwei Seongkawa Gwajei—Cheoijongheongtaeane Daehan Pyonggawa Jeonwel Pohamhayeo (Achievements and Issues of Civil Participation Trials—With Evaluation and Recommendations on the Final Form Plan)*, 146(3) JEOSUTIS (JUSTICE) 75 (2015).

high as 65.2% of cases eligible for participatory trials during the seven years were cases in which defendants denied the charges, one can say from this relatively high percentage that, “democratic legitimacy” and “confidence”¹⁶ in the judicial process as stated in Article 1 (Purpose) of the Act have been achieved to some degree. The percentage of “not guilty” verdicts was the highest for “sexual offenses,” which is inversely proportional to the lowest percentage of “guilty” verdicts in such cases. This is presumably due to stricter enforcement of sex crime laws in recent years.

Table 1 Applications for the CPCT and actual implementation (2008-2014, cases)¹⁷.

Received		Processed				Not settled
		Subtotal	CPCT	Excluded by court	Withdrawn by defendant	
2008	233 (100.0%)	215 (92.3)	64 (27.5)	61 (26.2)	90 (38.6)	18 (8.1)
2009	336 (100.0%)	308 (91.7)	95 (28.3)	75 (22.3)	138 (41.1)	46 (10.5)
2010	438 (100.0%)	414 (94.5)	162 (37.0)	75 (17.1)	177 (40.4)	70 (16.0)
2011	489 (100.0%)	494 (101.0)	253 (51.7)	63 (12.9)	178 (36.4)	65 (13.3)
2012	756 (100.0%)	676 (89.4)	274 (36.2)	124 (16.4)	278 (36.8)	145 (19.2)
2013	764 (100.0%)	797 (104.3)	345 (45.2)	118 (15.4)	334 (43.7)	112 (14.7)
2014	608(100.0%)	611(100.5)	271(44.6)	107(17.6)	233(38.3)	109(17.9)
Total	3,624 (100.0%)	3,515 (97.0)	1,464 (40.4)	623 (17.2)	1,428 (39.4)	-

* From 2009, numbers included cases carried forward from the previous year.

Table 2 Distribution of verdicts (2008-2014, cases).

Crime	Persons	Guilty		Not guilty		Guilty + Not guilty (Not classified as “unanimous” or “majority vote”)		
		Unanimous	Majority vote	Unanimous	Majority vote	Concurrent crimes	Primary (not guilty)	
							Secondary (guilty)	Others
Murder	387 (100.0%)	291	37	8	5	21	3	22
Robbery	268 (100.0%)	141	21	19	4	48	7	28
Bodily injury	74 (100.0%)	50	6	5	2	4	1	6
Sexual offense	244 (100.0%)	95	39	42	24	29	1	14
Others	491 (100.0%)	325	41	27	15	69	2	12
Total	1,464 (100.0%)	902 (61.6%)	144 (9.8%)	101 (6.9%)	50 (3.4%)	171 (11.7%)	14 (1.0%)	82 (5.6%)

¹⁶ Choi, *supra* note 3, at 84-89.

¹⁷ Source of Tables 1-3: Daebeopwon Sabeopjiwonsil (Legislation Support Center of the Supreme Court), *supra* note 10.

Table 3 shows the rate of agreement between jury verdicts and the professional judge decisions. In nearly 93% of all cases, the two parties were in agreement, indicating that, judges respect jury verdicts. Of the cases where agreement was not reached, there were 97 cases in which the jury found defendants not guilty but the judges found them guilty¹⁸. The opposite was true for the remaining eight cases. If judges had accepted these 97 “not guilty” verdicts, the overall percentage of “not guilty” cases would have been higher at 16.9%.

Table 3 Agreement between jury verdicts and professional judge decisions(2008-2014).

	Total		Agreed		Disagreed	
	Cases	%	Cases	%	Cases	%
Cases	1,464	100.0%	1,359	92.8%	105	7.2%

III. ISSUES RELATED TO JUROR’S INDEPENDENCE IN DELIBERATIONS AND VERDICTS

A. *Realities of the CPCT*

Deliberations and verdicts form the core of the CPCT. If, in the course of conducting deliberations or delivering verdicts, jurors are significantly deprived of their autonomy and independence, holding participatory trials becomes practically meaningless. If this is the case, how should the roles of jurors be understood within the present form of participatory trials? It is often pointed out that, the current system in Korea is a mixture of the jury system and the lay judge system, but that it borrows more heavily from the former than from the latter. However, this assumption needs to be scrutinized in light of a broader perspective of the CPCT.

The Korean system is similar to a jury system in that: a person who is selected to take part in a criminal trial is defined as a “juror”¹⁹; in courtrooms where participatory trials are conducted, jurors are supposed to take seats in a section completely separate from the judges’ section in order to observe the selection process and trial from a third-party perspective, and thus are not directly involved in the trial procedures, at least superficially; and deliberations conducted and verdicts are reached by jurors alone, in principle. Up to this point, one might be safe in insisting that, the Korean

¹⁸ Daebeopwon Sabeopjiwonsil (Legislation Support Center of the Supreme Court), *supra* note 10, at 21.

¹⁹ Article 2.

system essentially resembles the jury system.

If we take a glance at what is hidden behind the scenes, however, things take on a different light. The very fact that judges are allowed to participate in deliberations, albeit as an exception, diminishes the original purpose of the jury system and brings elements of the lay judge system into relief. If the jury fails to reach a unanimous verdict as a result of its deliberations, the jurors must then hear the opinions of the judges as stipulated in the Act²⁰; however, regardless of whether or not the jury has reached a unanimous verdict, the jury may invite judges to the deliberations to hear their opinions when a majority of jurors requests to do so, as provided in the Act²¹. This is very similar to how the lay judge system works. Furthermore, if a guilty verdict is delivered, jurors will not be released from trials, but instead will have to discuss sentencing with judges and express their opinions, as described in the Act²². Nevertheless, the Act states that, jury's verdict is not binding on the court²³. This might mean that, judges are under no compulsion to be bound by verdicts because, as in the lay judge system, they have already discussed the sentencing together with the jurors, but this is conclusive evidence that the jury lacks true independence under the CPCT system.

As explained thus far, at first glance, the current CPCT in Korea may superficially appear to bear a strong resemblance to the jury system; however, on digging a little deeper, it immediately becomes apparent that, it is in fact a lay judge system. One may well argue that, it is somewhat unavoidable for the Act to allow judges to participate in deliberations or to make verdicts not binding since the system is still on its test run. That being said, if these two points are not improved, chances are that the CPCT system in Korea may end up losing its meaning and ultimately exist in name only.

When a participatory trial system was still being designed, it must have been concluded that, a jury system would have a higher degree of freedom from the influence of judges than the lay judge system, and that in order to raise "democratic legitimacy" and "confidence" in the judicial process²⁴, a "jury" would be more desirable than "lay judges". However, might then wonder, why it was necessary to resort to "lay judge" approaches in the resulting system. The CPCT has been hailed as the "first reform" in the history of the Korean judiciary system, but is this not a testament to the fact

²⁰ Article 46 (3).

²¹ Article 46 (2).

²² Article 46 (4).

²³ Article 46 (5).

²⁴ Article 1 of the Act.

that, its deepest intentions are not to give any real power or authority to the system for “citizen participation in criminal trials?” Put differently, is it not because the “jury system,” which is more essential in nature, is harder to control than the “lay judge system?” These concerns are still evident in the revision bill, which was put before the National Assembly last year, but is nearly identical to the original bill.

B. Independence during Deliberations

Issues relating to the independence and autonomy of jurors’ deliberations and verdicts in participatory trials mainly arise from the jurors’ relationships with judges²⁵. As a system that combines both the jury system and lay judge system in order to facilitate deliberations by jurors which have come to an impasse, the Act provides that, judges may attend the deliberation process and state their “opinions” when a majority of jurors requests the same, and that, they must also do so if the jury fails to reach a unanimous verdict. Under such circumstances, however, one cannot dispel the suspicion that judges might exercise undue influence on the decision-making process of the jury²⁶. The Enforcement Rule of the Act sets only the minimum restrictions in this regard, namely, the Act²⁷ states that, even when judges take part in the deliberation, they are not allowed to state their opinions on whether the defendant should be judged “guilty” or “not guilty”, and no other concrete provisions are provided. That is to say, once they take part in the deliberations, judges may state their opinions on the credibility of evidence and finding of facts. In reality, however, any opinions on the credibility of evidence and finding of facts can have a conclusive impact on the determination of guilt. Accordingly, it would be difficult to accept a verdict delivered after jurors have heard such opinions from judges as one that was given independently and free from the influence of the court²⁸. Furthermore, so long as judges’ attendance in any form during the deliberations is assumed as in the Act, changes such as merely replacing

²⁵ This can, of course, occur among the jurors, but such cases lie beyond the scope of this report.

²⁶ Unfortunately, the author was unable to find detailed data that show how often judges participate in deliberations. However, judges certainly participated in 13.6% of the cases (sum of “guilty” and “not guilty” verdicts by a majority vote” (see Table 2).

²⁷ Article 41 (5).

²⁸ Sang-Hoon Han, *Gungminwei Hyeongsajaepane Gwanhan Beopyeulsang Baesimweonseonjeong Jeolchawei Naeyonggwa Geommtto—2006 nyeon 4weol 12 il Sagaechurweuimoweijaepanwei Geongheomweol Jungsimweiro (Details and Study of the Jury Selection Process under the Law Concerning Citizen Participation in Criminal Trials: From Experiences at a Mock Court by the Judicial Reform Promotion Committee of April 12, 2006)*, 19(1) HEONGSAJEONGCHAIG (CRIMINAL POLICY) 67 (2007).

“opinions” with “explanations” or specifying the scope of those explanations do not represent radical measures sufficient to guarantee jurors’ autonomy and independence, because once judges take part in the deliberations, there is no way for any impartial third-party to monitor or check the procedure. Moreover, this could foster a tendency on the part of jurors to rely on the judgments and opinions of professional judges, rather than try to reach a conclusion through earnest discussions drawing on their own experience and wisdom, even at the risk of having conflicting opinions²⁹. If this becomes the case, jurors would be reduced to the role of mere assistants to the judges instead of core members in participatory trials as they are supposed to be, and the original purpose of the CPCT would eventually be lost³⁰.

Actually, earlier research and analysis involving shadow jurors discovered that, the variable with the greatest influence on deliberations was the juror’s assessment of how helpful the attendance and opinions expressed by judges were in assisting deliberations to proceed smoothly. The study concluded that, this is indicative of the fact that shadow jurors think of judges’ roles as higher than their own participation in the deliberations³¹.

Rather than mixing the elements from the jury system and lay judge system only to extract their cores and create a mediocre and ambiguous system, the authorities should make a definite choice between these two participatory trial systems and formulate plans to enhance the system’s effectiveness. In conclusion, the author believes that, the only way to do this is to completely remove judges from the deliberation process, because the involvement of professional judges in participatory trial deliberations can hinder the essential purpose of citizen participation in criminal trials.

²⁹ Ho-Jong Lee, *Gungminchamyeojaepanwei Seonggawa Gwaje (Achievements and Issues of Citizens’ Participatory Trials)*, 1(3) GIEOPYEONGU (STUDY OF LAWS AND ENTERPRISES) 218 (2011); Eun-Mo Lee, *Heonhaenggungminchamyeojaepanwei Naeyonggwa Munjecheom—Ilbbonwei Jaepannweonjedowawei Bigyeoreul Jungsimwehro (Contents and Problems of the Current Citizens’ Participatory Trial System: Focusing on Comparison with the Japanese Citizen Judge System)*, 26(1) BEOPHAGRONNCHONG (LAW REVIEW) 67 (2009).

³⁰ Jung-Jin To, *Gungminchamyeojaepanseo Pyeongwei mit Pyeonggeolwei Dongripseonghwakpoe Gwanhan Yeongu (Study on Ensuring Independence of Deliberations and Verdicts in Citizens’ Participatory Trials)*, 25(1) HEONGSABEOPYEONGU (CRIMINAL LAW REVIEW) 423 (2013).

³¹ Ji-Sook Woo, June-Woong Rhee, & Jae-Hyup Lee, *Jaepanwei Gonjeongseonge daehan Inseeke Yeongwhangweol michineon Yeoine daehan Yeongu—Gungminchamyeojaepan Shadow Baesimweon Deolwei Geomweol Batangweoro (Study of Factors Affecting Recognition of Impartiality of Trials—Based on Experiences of Shadow Jurors for Citizens’ Participatory Trials)*, 54(4) SEOULDAEHAGKYO BEOPHAK (SEOUL NATIONAL UNIVERSITY LAW REVIEW) 282 (2013).

C. Arriving at Verdicts

It is often said that, jurors' verdicts have not been given binding power out of fear of violating the Constitution. There are many different views on this subject, but if a truly participatory trial commensurate with the Act³² is to be held, binding power must be granted, even if it means considering a constitutional amendment. Majority opinion seems to be that such power should be given, but most of the comments on how constitutional infringement can be avoided are vague at best, and only a few go so far as to insist on a constitutional amendment. As it stands, it would be difficult to grant binding power either with or without constitutional amendments.

Being trapped in this dilemma, the amendment bill represents a third way, that is, to grant "practical binding power" through rather vague wording ("... shall respect verdicts"), rather to declare that binding power be given. Even this new solution does not seem to be very effective, however, since it provides for a broad range of exceptions. It even describes how the manner in which verdicts are delivered should be changed. Specifically, in exchange for granting "practical binding power", it suggests that, the simple majority vote should be abolished and instead adopts a weighted majority vote in which a verdict is passed only with approval from at least three-fourths of the jurors. Here again, however, other issues might arise on account of the involvement of judges in deliberations. These issues might occur in the first place due to the fact that, judges are allowed to take part in the deliberations. The following are some of these possible issues.

If jurors fail to reach a unanimous decision on the primary verdict, they cannot move on to a secondary verdict for a weighted majority vote without hearing the opinions of the judges who are taking part in the trial. If, in the secondary verdict, they fail to reach a weighted majority vote of at least three-fourths, judges must hand down sentences independently without a verdict from the jurors. It takes a great deal of effort for general citizens to serve as jurors and take part in participatory trials. In cases like this, however, all of their hard work would be completely for naught. No one can say with any certainty that, this situation would not result in significant impairment of the autonomy and independence of a jury's verdict, as the jurors, who are keenly aware of the possibility that their efforts may be futile, may feel that, they have no choice but to agree with the judges' opinions and explanations (or the judges may even threaten them by implying that, "If a verdict is not reached by a weighted majority vote, I will hand down my own sentence"). Thus, the jurors are forced to listen to the

³² Article 1 (Purpose).

judges' opinions while being subjected to psychological pressure.

Another point that the author wishes to make is, as described in the explanations of Table 3, there have been as many as 97 cases in which jurors delivered a "not guilty" verdict that was overturned by the judges' sentences. Presumably, judges were not invited to take part in the deliberations in those cases. In other words, had the judges been invited by the jurors to state their opinions in the deliberations, it is suspected that, jurors would not have dared to deliver a "not guilty" verdict. It would seem that, these were cases in which the judges, who were not invited to take part in the deliberations, hindered the independence of jurors' deliberations after the fact.

CONCLUSION

The revision bill that, the Korean government submitted to the National Assembly aims for a revision that does not go beyond the bounds of constitutional conformity. Because of this, it leaves much to be desired. One may rightly be concerned that, the system will turn out to be an unsatisfactory and mediocre half measure, completely incapable of fulfilling its original purpose of raising "democratic legitimacy" and "confidence" in the judicial process as stated in Article 1 of the Act. Instead, it should be reformulated as a system that truly allows citizens' participation in trials. There is no reason why the people must be content with a vague, half-baked mixture of the jury system and lay judge system, or the present system that is one of participatory trials in name only. Below are the major conclusions of this report.

(1) A criminal trial system that welcomes citizens' participation is indispensable for judicial reform in Korea. However, to raise "democratic legitimacy" and "confidence" in criminal trials as stated in Article 1 of the Act, a pure "jury system"³³ is, in the opinion of the author, more effective and appropriate for Korea than the lay judge system.

(2) It would better serve the original purpose of the CPCT to never allow judges to be present at deliberations by jurors. This would be in line with its standing as a "pure" jury system.

(3) Verdicts should be given "legal binding power", rather than only ambiguous "practical binding power".

(4) Having jurors take part in discussions on sentencing after verdicts have been given is simply a rejection of jury independence, and thus should

³³ But the Jury System that is mentioned here doesn't necessarily mean only American Jury System. It is just a symbolic meaning that, the citizens can monitor and control the trials.

be abandoned, although this would naturally disappear by itself were a “pure” jury system to be established.