

Trends & Policies in Criminal Justice

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Corruption Investigation Office For High-ranking Officials

Introduction

There has been public discussion on the necessity to establish Corruption Investigation Office For High-ranking Officials (CIO) since the early 1990's. In November 1996, People's Solidarity for Participatory Democracy made public a draft of Corruption Prevention Act and highlighted the significance of setting up a special investigation body, dedicated to corruption cases involving high ranking officials. The same year, 80 lawmakers including Ryu Jae-gun sponsored an act stipulating the establishment of corruption investigation office for high-ranking officials. The government started to pay attention to establishment of the investigation body in 1999. In 2002, People's Solidarity for Participatory Democracy filed a petition to legislate a law on the establishment of CIO. Under the proposed act, CIO would be operated under the presidential office and granted powers to prosecution, investigation, and execution.

President Moon Jae-in took office in May 2017 after impeachment of former president Park Geun-hye. The government selected the establishment of CIO as one of top 100 national tasks, which is the main way to root out corruption of high-ranking officials. The Ministry of Justice announced the government plan by stipulating the 'Law of the Justice and Prosecution Reform Committee.'

In April 2019, bills, proposed by lawmakers of Paik Hye-ryun and law maker Kwon Eun-hee respectively, were designated as the proposals requiring fast track procedures. Besides, more than 10 bills related to the establishment of CIO were presented in the 20th Assembly.

For the past 25 years, more than 20 bills were proposed to establish CIO. Finally, the bill on establishing the CIO was passed by the National Assembly on December 30, 2019.

The current government tries to reform the prosecution and proposes the reform of investigation authority between the prosecution and the police as well as the establishment of CIO as one of top national tasks.

Regarding the adjustment of investigative power between the prosecution and the police, the ruling party and the opposition party iron out difference by the Special Committee on Justice Reform after the Minister of Justice and the Minister of Public Administration and Security reach an agreement on the issue. However, two parties can not narrow the disagreement in the establishment of CIO.

The majority of people have supported the establishment of CIO, thus, it is imperative that lawmakers should review issues of the bill and present practical solutions for pending issues.

In addition, as there are many issues related to the operation of CIO, it is expected that further research on the issue can reduce trials and errors in the operation of CIO and help it take a firm root.

Research Methods

Literature review

- Review and analyze literature, research, reports, and bills which had been presented by lawmakers, civic groups, bar associations from the beginning of the discussion of CIO to the present.
- Examine reports of Hongkong, Taiwan, Malaysia or other countries in South East Asia to find out similar cases of establishing an investigative body for corruption of high ranking officials. It is also found that there is no independent investigative body in developed countries such as the U.S., Japan, and Germany. For more information, a comparative analysis has been conducted on the establishment and authority of an agency to investigate corruption involving high-level officials of several OECD members.

Interdisciplinary studies

- In the past, discussions on CIO are mainly centered on legal issues from the perspectives of the Constitution, Criminal Law, and Criminal Procedure Law. The study analyzed issues related to CIO, such as feasibility of establishment and future direction of operation, not only from legal perspective but also from administrative perspective, especially organizational theory.

Survey

- A survey on people's opinions on CIO is conducted to confirm their thinking and views on the establishment of CIO.

Results

Independent special prosecution or special inspectors and the necessity of establishing a designated investigative body

- In the U.S., the introduction of permanent organizations has been raised along with criticism for the independent counsel system due to the prolonged investigation and lack of budgets. The plans to appoint special counsels are failed largely due to the criticism that the special investigative authorities would be granted excessive investigation power compared to other crimes.
- The Independent Counsel System is a special and permanent organization with authority to inspect corruptions, but it has limitations in preventing and investigating corruption offences.

Outcomes of the survey

- According to the survey, 62.0% of respondents is in favor of CIO while 29.3% was in opposition, and 8.6% is 'don't know.' Regarding the question about the introduction of municipal police, around 47.5% is in favor while 17% answers 'don't know'.
- By gender, there is no difference in approval rating. The opposite is 33.7% for men and 25.0% for women. The rate of 'don't know' is 4.2% for men while 12.9% for women.
- By region, respondents in favor are 73.9% in Gwangju, Jeolla, Jeju, and 53.5% in Daegu and Gyeongbuk.
- By age, respondents do not show much difference. For those aged between 30-39, the approval rate is

over 77.6% and 70% for both 19-20 and 40-49 age groups.

- By occupations, 81.4% of students and 48% of those engaged in agriculture, forest or fisheries have said they are in favor of CIO.
- Those respondent who highly evaluated the performance of the president show higher approval rating (89.7%).
- Among them, 89.2% of those for the Democratic Party of Korea and 2.5% for Our Republican Party are in favor, respectively.
- The confidence in the police do not have much impact on supporting establishment of CIO, however, it seems that people's confidence in the prosecutor is a significant factor in supporting the establishment of CIO.
- The trust rate for the authorities is 42% for the police, 36.3% for the prosecution and 39.6% for the court.

Overseas cases

- The study examines anti-corruption bodies of foreign countries. In the U.K., Norway, New Zealand, Spain, Hungary, and Netherlands, anti-corruption bodies are granted powers to investigate and prosecute. In Austria, the body is invested with the power only to prosecute. In Poland and Australia, those bodies also provide services such as training and education programs on anti-corruption. When it comes to the governing authorities of the anti-corruption body, in the U.K., New Zealand, and Netherlands, it is operated under the Ministry of Justice, while it is under the Prime Minister's Office in Poland and Australia. It is affiliated with the National Police Agency in Norway, Ireland, the Czech Republic, and Belgium. In Spain, Hungary, and Austria, it is operated under the Prosecutors' Office.

Feasibility of establishing CIO from the perspective of organization theory

- The establishment of CIO could be another way of reorganizing the prosecutors' office with the purpose of distributing prosecution power based on the principle of differentiation in an organizational design. At the same time, setting up CIO would be a way to conduct investigation on and prosecute high-ranking officials involved in corruption or irregularities at the will of the people.
- From the principal-agent perspective, power

abuse by the prosecutors and internal corruption could be explained by moral hazard. This could be understood as a result of information asymmetry and imbalance of interests. Therefore, these inconsistencies should be dealt with.

- What is needed to effectively address corruption is not individual response by an organization but a cooperative and comprehensive governance approach among related agencies and organizations. It is needless to say that the eradication of power-type corruption could not be accomplished in a single step. The establishment of CIO is not a silver bullet. However, the introduction of a special anti-corruption agency, such as CIO, could be seen as the beginning of reforms aimed at breaking the existing vicious circle by introducing new actors.
- This is because reorganization or reform would not be accomplished at once but reorganization is constituted with a series of processes. The public also expect CIO to serve as a facilitator or foundation for further reform.
- However, reorganization and reform can be influenced by political environment, leadership, and other factors and make different results. For this reason, it is difficult to say that reorganizing a certain body or agency is essentially right or wrong. Therefore, it is necessary to pay attention to and discuss a plan to reorganize bodies and operation of CIO for effective implementation of anti-corruption policies and appropriate distribution of prosecution power.

CIO for rooting out corruption and reforming of the prosecutors' office

- In fact, those two goals – rooting out corruption and reforming of the prosecutors' office – of CIO should be carried out on an equal basis. Furthermore, we should keep in mind that the primary goal of CIO is to deal with corruption or irregularities of high-ranking officials rather than others.
- The fact that subjects of investigation by CIO are high ranking officials and authorities strongly supports the reason and need for “strong” independence to be recognized by CIO. CIO would serve not only a critical function in the criminal justice system in the prevention and investigation of corruption, but also a power control mechanism that upholds democracy and rule of law and monitors the corruption of public and morality of power.

- In terms of power control, the function of CIO would not be limited to the monitoring and controlling the National Assembly, but there might be more room for the people to connect with the National Assembly. Bills providing prosecution or nonprosecution screening-out system seem to make clear that CIO's right of prosecution does not mean CIO is a branch of the prosecutors' office, but it is closely related to exert sovereign authority of people. The right to prosecution could be viewed as impeaching corruptive power under the name of the people. Therefore, the right has a symbolic value which well meets with the name of CIO.
- To become truly an independent investigation bureau, prosecutors belonged to CIO must also act as representatives of the public interests. So, they have to perform the duties of general prosecutors as special agents dealing with problems of the prosecutors' office.
- In Taiwan, the demand for the establishment of an anti-corruption body (Agency Against Corruption) and reform of the law increased since the late 2000s when a large scale corruption involving judicial officials broke out. The Agency Against Corruption (AAC) has successfully uncovered a number of corruption cases and prosecuted those involved since it was established in 2011. However, there were also problems such as its weak independence, non-cooperation of the investigation bureau, the operation of personnel (investigators were dispatched prosecutors), a lack of sense of unity within the body, and the alienation of employees due to strong control by prosecutors. Considering the attitude of prosecutors to CIO and the range of crimes which could be prosecuted by CIO, there are chances for Korea to experience similar problems. Therefore, it is necessary to come up with a framework to promote competition in good faith and smooth cooperation to prevent unnecessary misunderstandings and conflicts.
- There is no significant difference in emphasizing the independence and political neutrality of corruption investigation bureaus. The assertion that the corruption investigative body should belong to an administrative department leans heavily toward the separation of powers. Instead, defining the CIO as a broader sense of the administrative department is deemed to conform to the principles of democracy, in a bid to promote fundamental rights of the people and the integrity and fairness of the government. The chief of the CIO is nominated by the president, the judiciary and the legislative, thereby providing room for rectifying wrongdoing such as the abuse of power in a form of decision regarding budget, disciplinary measures, impeachment and fiscal arrangement.
- Only if there are checks and balances in place among the police in charge of investigating ordinary crimes, the prosecution responsible for prosecution and indictment and the CIO investigating and prosecuting high ranking officials, it can be possible to eradicate corruption and ensure the fairness of the investigative agencies.
- Bills showed differences in defining the scope of high-ranking officials who are subject to investigation by CIO and the period of time after retirement of high-ranking officials.
- Regarding the scope of investigation by CIO, the bill by lawmaker Kwon Eun-hee defines the object of investigation in the narrowest scope while that of People's Solidarity for Participatory Democracy and the Prosecutors' Reform Committee is at the end of spectrum.
- When it comes to procedures for appointing the Director of CIO, there are also differences in proposed bills, among which the one by lawmaker Paik Hye-ryun and lawmaker Yoon So-ha contains the veto power.

Analyzing bills covering CIO and comparing legislations of other countries

- This study examines bills proposed by lawmakers Paik Hye-ryun, Yoon So-ha, and Kwon Eun-hee, drafted by People's Solidarity for Participatory Democracy and the Prosecutors' Reform Committee, and compares them to legislations of other countries.

Policy Recommendations

Directions of CIO

- The study proposes a reciprocal investigation between the prosecutors' office and CIO. For example, when a member of CIO is suspected or detected being involved in corruption cases, the prosecutors' office conducts investigation against

him or her. By doing so, they could maintain checks and balances to each other.

- In the appointment of the Director of CIO, the recommendation committee should be established to effectively select the most qualified one. First the committee gets recommendations of candidates from various fields, screens out them and then presents the final list to the president. The Director should be appointed after nomination of the president and confirmation hearing. However, measures should be made to minimize the impact of the president and politics on the nomination process of the recommendation committee.
- Appropriate control mechanism on authority is needed to prevent moral hazards of investigation agents of CIO. For example, it would be helpful to introduce civic committee and the court for the prosecution, and expand the right to file application for adjudication.
- It is necessary to supplement the procedures for appointing the Director of CIO to ensure political neutrality of him or her by granting veto power to the opposition party. However, restrictions should be put in place to prevent abuse of the veto power.
- The Director of CIO should be limited to serving one 4-year term and retire at the age of 70 with an aim to ensure political neutrality and independence of him/her.
- The autonomous power of CIO can be temporarily enforced in budget planning and accounting for its independence. To guarantee its independence, it can be said to define CIO as a central institution under the national financial law.
- Taking into account the fact that the prime purpose of establishment of CIO is to root out corruption, it is necessary to include delinquency of duties, abuse of authority, illegal arrest or confinement, physical assault, harassment, publication of facts of suspected crime and acceptance of bribery. The violation of the Public Official Election Act can be linked to expansion of CIO or granting excessive power granting, thus, the violations of the Public Official Election Act can be investigated by the police and prosecuted by the prosecutors' office through adjusting the right to investigate between two investigative authorities.
- It would be needed to expand the time period of investigation to two to three years after a subject of investigation retires. If the subject of

CIO investigation is limited to incumbent officials there might be loopholes. For example, if an official, who is suspected to be or is involved in corruption, retires from the position, it would be difficult to proceed the investigation on CIO.

- One of the purposes of the establishment of CIO is to check and balance the prosecution authority of the prosecutors' office. Therefore, CIO should be granted rights to request a warrant and prosecute.
- Functional division of power so-called separation of investigation and prosecution, should be realized to ensure checks and balances within CIO. It might be desirable that departments within CIO are strictly divided into the investigation department and the prosecution department. The detectives and head of the investigation department should not be engaged in prosecution.

Expected Effect of the Policies

- The study would gain ground on the establishment of CIO based on reviews in feasibility of its establishment.
- The study would serve as a momentum to implement top national tasks of the government.
- The study would lead to further discussion on the establishment of CIO and its operational direction as it comprehensively explores domestic and foreign research and reports on anti-corruption bodies.

Major Keywords

Corruption investigation office for high-ranking officials (CIO), Reform of the prosecution, Prosecutorial monopoly, Anti-corruption, Prevention of corruption

This report was written on October, 2019. The CIO is expected to be launched on July, 2020.



Memo







Change

Human Behaviors
Community Response
Social System