

Trends & Policies in Criminal Justice

No. 005 August 2020

Dr. Misuk Park is
a Senior Research Fellow
at Korean Institute of Criminology.
(misuk@kic.re.kr)

Mrs. Jooyeon Seo is
a Research Fellow (Attorney-at-Law)
at Korean Institute of Criminology.

Dr. Yimoon Choi is
an Associate Professor
at the Korean National Police University.

Criminal Policy and the Judicial System (XIII) :

10-year evaluation on citizen participation in criminal trials and policy plans

Introduction

Necessity of the research

- Citizen participation in criminal trials (Korean jury trial) was first introduced to secure democratic legitimacy and promote the public trust in judicial process. After years of in-depth discussion of the Presidential Commission on Judicial Reform, 「Act on Citizen Participation in Criminal Trial」 was enacted on June 1, 2007 and took effect. The act provided legal grounds for implementation of citizen participation in criminal trials in Korea.
- There have been mixed reviews as the citizen participatory trial system has been implemented over the past ten years. It is evaluated that citizen participation in criminal trials has achieved significant outcomes in terms of democratic legitimacy and the public trust in trial process. However, the Korean jury trial system has not yet been legislated and remained as a pending issue.

Purposes of the study

- This study has been conducted to examine public opinions based on the following factors: a) whether the Korean jury trial is a high-cost and low-efficiency system or not as some argued, b) whether it has taken a firm root in Korean judicial system, or c) whether it has failed to harmonize with a traditional trial system as a disparate legal system.
- It is time to decide whether the Korean jury trial, which has been regarded as the greatest achievement of the judicial reform in the early 2000s, will be maintained as it is or needs to be aimed at improving the judicial system.

Research Methods

Literature and empirical reviews

- The literature reviews are based on recordings and archives of public hearings, 2004 Judicial Reform Committee, 2005 Presidential Commission on Judicial Reform, and 2018 Judicial Development Committee.
- KIC has conducted literature reviews and the research results are as follows; 1) the public perceptions of citizen's participation in criminal trials, especially at the beginning, 2) the result of the observation on the citizen participation in criminal trials in 2008, and 3) the public perception on the new criminal trial from 2008 to 2011. The research also examined other related studies; research on public perception on credibility in law enforcement process such as democratic legitimacy, fairness, and the public trust in trial process (Euiki Shin, 2012), and KBS Public Media Institute's public opinion poll 2015 on the citizen participation in criminal trials.
- The following research or studies are reviewed as they dealt with issues and main contents of the citizen participation in criminal trial system: 'Measures to Vitalize the Citizen Participation in Criminal Trial by Increasing the Application rate of Defendants' (Sanghoon Han etc., 2017), 'Study on Citizen Participating in Criminal Trial from the Perspective of People Involving in Trials' (Sanghoon Han, etc, 2012) and 'Analysis of Factors Affecting Jury Innocence Verdict in the Citizen Participation in Criminal Trial and Institutional Improvements (Donghee Lee, 2012).
- The research refers to 'Analysis on the Operation of 2008-2018 Citizen Participation in Criminal Trials' by National Court Administration of the Supreme Court in June 2019 and official statistics on the jury system of White Paper on Crime by Institute of Justice.

Empirical research: in-depth interview and survey

- Each district court has conducted trial observation and nationwide questionnaires. Twenty six judges in 7 district court participate in this survey, and 38 judges from 8 district courts returned the survey by mail.

- A total of 52 questionnaires were collected from prosecutors involved in the jury trial and the bench trial for two years through the prosecutor's intranet with cooperation of Criminal Trial and Civil Litigation Department of the Supreme Prosecutors' Office.
- Surveys were conducted by mail, fax, and other means of communication on public defenders and lawyers belonging to five local lawyers' associations. Total 239 lawyers responded to the survey, specifically, 71 public defenders, 43 court-appointed lawyers, 124 private attorneys, and 1 attorney from Korea Legal Aid Corporation.
- Real judges and jurors participated in a court-approved survey. A total number of 138 questionnaires were collected from jurors in 19 citizen participation trials of 8 district courts, and 122 were selected for a statistical analysis.
- A total number of 1,046 inmates' questionnaires were collected from five correctional facilities across the country in cooperation with agencies such as Korea Correctional Service of the Ministry of Justice. However, the total of 1,016 questionnaires (52 inmates have 'experience' in the jury trial and 964 cases of 'non-experience') were chosen excluding non-response (11 cases) and overlapping responses answering both experience and non-experience of questionnaires (19 cases).
- An online survey was conducted through a survey service provider on around 1,000 adults aged 19 and over who were eligible for jury selection. 1,047 respondents took part in the survey.
- In addition, in-depth interviews were conducted on 3 judges engaging in the jury trials, 3 prosecutors and 2 court-appointed lawyers, 2 private attorneys and 1 juror.

Empirical research: analyzing judgements by the court

- Considering the necessity and importance of judgment of the Korean jury trial at the first trial, court rulings were gathered by means of the judgement providing service, law-related websites and news articles. Judgements of acquittal at the first instance court (158 cases) were compared to guilty verdicts (21 cases which were reversed on appeal) to identify factors affecting a verdict of not guilty.

Results

Legislations on citizen participation in criminal trials

- Citizen participation in criminal trials (the Korean jury trial) had long been discussed and finally resolved by the Judicial Reform Committee (people's participation in judicial proceedings) and Presidential Committee on Judicial Reform (the system of people's participation in judicial proceedings). In the end, 「Act on Citizen Participation in Criminal Trial」 was enacted on June 1, 2007 and took effect on January 1, 2008. Subsequently, the final form of the Korean jury trial was discussed by the National Committee on People's Participation in Judicial Proceedings, the government proposal (Bill No. 1910825), and proposals on final form of the Korean jury trial by the judicial development committee (expanding and strengthening the judicial participation of citizen) were discussed but failed to amend.
- From the 18th National Assembly to the 20th National Assembly, a large number of bills related to the Korean jury trial were presented; the above aforementioned government proposals, the court with jurisdiction over cases which might be heard by jurors, target cases, requirements, an exclusion decision, number of jurors, a legal structure, a legal force of verdict, a method of jury deliberation and delivering verdict, limitations on appeal by prosecutors. However, pursuant to the bill proposal of the head of Legislation and Judiciary Committee (Bill No. 1814358), the 18th National Assembly expanded the target cases to those that should be tried by a panel of three judges and also provided reasons for exclusion. For example, if the victim of sexual violence crime does not want that his or her case is tried by the jury, the trial chamber has the authority to exclude the case from the jury trial. However, no further amendment has been made since then.

Status of Korean jury trials and analysis of court's judgment

- Based on the data of '2008~2018 Analysis of Citizen Participation in Criminal Trial' by the Office of Court Administration, the research reviewed the current status and procedures of citizen's participation in judicial proceedings, the rate of defendants applying for civil participatory trial, the jury trial operation, challenge for cause or peremptory challenge, exclusion rate, withdrawal rate by defendants, trial preparation time, jury deliberation, process of a trial, verdict, sentencing by the court, appeal rate by defendants and other related data.
- The 156 cases of acquittals in the first trial of the jury trial system were analyzed by those categories; charges, confession by defendant, jury deliberation, verdict, judgment by the court, and reasons for judgment. In particular, inculpatory and exculpatory elements were classified into the requirements for crimes, a plea guilty, the extent of the damage, the faithfulness of the evidence, and the reliability of the statements.
- The 21 cases were examined where the first trial rulings on defendant's innocence were overturned at appellate courts by being convicted or partially convicted for certain charges. After summarizing those cases, the research reviewed overall changes on appellate trials such as ways of reaching verdict (majority or unanimous vote) at the first trial, changes in indictment or charges at the second trial, and reasons for appeal and so on.
- In order to understand differences in the rate of innocence and conviction between verdict of jury trials and court rulings, the study compared the factors whether the jury verdict was delivered unanimously or by majority vote, whether the jury and the court reached similar rulings and charges as well as sentencing of cases where the court and the jury reached different conclusion.

Survey analysis: comparing recognition on the Korean jury trial by group

- Trust in criminal trials and judges (the general public, jurors, defendants, legal experts and professionals): Regarding level of trust in trials, judges showed the highest level of trust in trial followed by jurors, prosecutors, lawyers, defendants, and general public. The results showed that the juror did not differ significantly from the general public before the trial. It was confirmed that trust of the jury increased after the trial.
- Awareness on citizen participation in criminal trials (the general public, jurors, defendants): About the question, whether they knew citizen participation in criminal trials before the jury trial, the response rate of 'know in detail about the jury trial' is highest among defendants who had taken part in the jury trials, while the response rate of 'do not know at all' was higher than that of 'know in detail' among jurors.
- Prediction and actual evaluation of the jury verdict (the general public, jurors): 1) The general public expected that there was only about half of the consensus with a fierce debate among jurors. However, it was found that the consensus among juries was slightly higher than the general public presumption. 2) The public overestimated the influence of the judge's opinions over jury verdicts compared to the jury themselves. 3) Jurors responded that 'the discussion was sufficient' and 'opinions were made in an explicit way' for verdict of conviction, higher than the general

public perception. When asked it might be hard for jurors to decide whether the defendant is guilty or innocent, 79.2% of the general public said it might be difficult, however, only 65.2% of respondents who participated in the jury trial answered that it was hard for them. 4) In terms of non-legal factors that influencing jury verdicts, the general public expected that verdicts would be more affected by non-legal factors than jurors or defendants. Those attending in trial as jurors said that the public opinion was the most influential when they made a decision. 5) For factors affecting admissibility of evidence, the general public assumed that the jury would be affected by 'the opinions of a specific person', 'sympathy for the defendant', and emotions or prejudice, however, the jury replied that they were not significant.

- Recommendation on the Korean jury trial to others (the general public, jurors, defendants): The jury trial is highly recommended by the public or jurors while for defendants, whereas the number of defendants who would not be likely to recommend the jury trial is greater than those who do.
- Reasons for applying for trial by the jury (the general public and defendants): the public's prediction turns out to be relatively accurate over the reason behind the application for the jury trial and reasons are as follows : a) having enough opportunities to defense b) seemingly the jury fairer than the judge c) being favored in revealing one's innocence.

Level of trust in the judiciary and judges, and reliabilities of questions by groups							
	The general public	Jurors	Defendants with experience of the jury trial	Defendants without experience of the jury trial	Judges	Prosecutors	Lawyers
Average (standard deviation)	2.28 (.82)	3.65 (.97)	2.51 (.83)	2.42 (.91)	4.32 (.66)	3.30 (.68)	2.98 (.86)
Reliabilities of questions	.88	.92	.74	.87	.90	.86	.88

Awareness on citizen participation in criminal trial					
(unit: persons, %)					
Classification	Do not know at all	Heard that before, but do not know well	Have a general knowledge	Know in detail	Total
The general public	53(5.1)	449(43.1)	464(44.5)	76(7.3)	1042(100.0)
Jurors	21(17.2)	93(76.2)		7(5.7)	122(100.0)
Defendants with experience of the jury trial	4(7.7)	11(21.2)	18(34.6)	19(36.5)	52(100.0)
Defendants without experience of the jury trial	171(18.1)	217(23.0)	459(48.6)	98(10.4)	945(100.0)

non-response (defendants without experience of the jury trial): 19

Recommendation on the Korean jury trial to others: the general public, jurors, defendants							
(unit: person, %)							
Classification	Never recommend	Do not really recommend	Subtotal (do not recommend)	Like to recommend	Would recommend	Subtotal (do recommend)	Total
The general public	15 (1.4)	190 (18.2)	205 (19.6)	729 (70.7)	108 (10.4)	837 (80.4)	1042 (100.0)
Jurors	2 (1.6)	14 (11.5)	16 (13.1)	52 (42.6)	54 (44.3)	106 (86.9)	122 (100.0)
Defendants with experience of the jury trial		28 (54.9)			23 (45.1)		51 (100.0)
Defendants without experience of the jury trial		514 (54.6)			427 (45.4)		941 (100.0)

non-response: a defendant with experience of the jury trial and 23 defendants without

Reasons for applying for jury trial (the general public and defendants)		
(unit: persons, %)		
Questions	The general public	Defendants with experience of the jury trial
It would be advantageous to prove innocent to be tried by the jury.	336(32.2)	16(30.2)
To get more lenient sentencing	134(12.9)	5(9.4)
Vague expectations about the Korean jury trial	230(22.1)	7(13.2)
Recommendation of the attorney	77(7.4)	2(3.8)
The jury might be fairer than judges	493(47.3)	16(30.2)
Recommendation of other inmates	30(2.9)	2(3.8)
The jury trial might give more opportunity to defend	564(54.1)	17(32.0)
Possible to get help from the court-appointed public defender	93(8.9)	5(9.4)
Others	1(0.7)	-

Survey analysis: changes in awareness of the Korean jury trial (in comparison to precedent studies)

- This study conducted surveys on awareness of citizen participation in criminal trial and analyzed the results. Then it compared outcomes among respondents groups above mentioned. In addition, this study compared and analyzed the changes in perception of people about the jury trial based on literature reviews. Due to changes in research objectives and conditions, it was not possible to use completely identical questionnaire. However, despite such limitations, this research provides useful information to examine changes in the perception and awareness on citizens participation in criminal trial.

Literature reviews on citizen participation in criminal trial and subjects					
(unit: person)					
	Insub Choi et al. (2007)	Misuk Park et al. (2009)	Heeseong Tak et al. (2011)	KBS (2015)	This study (2019)
The general public	0 (1500 persons)	X	0 (1300)	0 (1541)	0 (1042)
Jurors	X	X	0 (148)	X	0 (122)
Judges	0 (39)	0 (7)	0 (48)		0 (64)
Prosecutors	0 (51)	0 (40)	0 (67)		0 (52)
Lawyers	0 (49)	0 (7)	0 (61)		0 (241)
Law professors	0 (57)	X	X		X
Defendants	X	X	0 (365)		0 (1016)

Comprehensive analysis: achievements and limitations of survey

- The survey analysis identifies the achievements of citizen participation in criminal trials; the public's eagerness and willingness to participate in the jury trial, the feasibility of the purpose of the civil participation system (securing democratic legitimacy of the judicial process, building trust in the judicial system, guaranteeing human rights of defendants and increasing legal consciousness), an improvement in the credibility of the judicial by the jury trials, increasing trust and fairness in the judicial proceedings through the civic participation in criminal trials, higher satisfaction among defendants on the jury trial's ruling and positive evaluation on court-appointed lawyers.
- On the other hand, the limitations of citizen participation in criminal trial have emerged such as a reduction in awareness of the jury trial, negative perceptions of legal experts on the jury trial, and continued concerns about the reliability of jury decisions. Therefore, it seems necessary to conduct follow-up studies and make up with countermeasures.

Policy Recommendations

Legislation and policy proposals for operation of the Korean jury trial

- To suggest future directions of institutional improvement, this study examined issues and challenges regarding constitutionality of citizen participation in criminal trial, jurors' professionalism and qualifications, and the necessity of institutional improvement measures to secure the binding force of jury verdicts.
- Issues on constitutional conformation of the jury trial: Constitutional disputes over the Korean jury trial have not been completely resolved. In the past, there were discussions on amendments to introduce legal grounds for the jury trial in 2009 and 2014. It is of necessity to focus on achieving practical goals by amending the relevant laws under the current legal system, especially in a situation where it is premature to discuss the overall amendment.

- Concerns about Juror's fairness and evaluation: One of main concerns before implementing the Korean jury trial was jury's fairness, understanding of proceedings and laws, and public trust in the jury. Looking at the results of the 2012 empirical survey and a survey commemorating the 70th anniversary of the judicial review in 2018, the majority of judge respondents agreed to the jury's verdict and said that the verdict was almost identical with their decisions on cases. These results showed that citizen participation in criminal trial is appropriate for Korean judicial proceedings from the perspective of democratic legitimacy of trial.
- Has the Korean jury trial achieved the goals? Citizen participation in criminal trials was introduced as an effective system to secure democratic legitimacy of trial and to increase the public trust in trial. In addition, It is widely recognized that the purpose of the jury trial system such as the realization of the principle of court-oriented trials, moving away from trial based on documents, improvement of jury trial experience and legal expert's trial skills, democratic legitimacy of trial and confidence in the judicial justice, and reflection of public sentiment and common sense has been realized to some extent.

Suggested direction of legislation

- It has been 10 years since the Korean jury trial was first introduced and implemented. Currently, the jury trial should be fossilized beyond its establishment, thereby representing the final form of the legislative model. For this purpose, the number of citizens experiencing the Korean jury trial should be increased to share positive experience of the new trial system, improve the legislative system, and develop a practical management plan and activate the system.
- Designating cases which must be tried by the jury by considering the follows; In the first place, the scope of the target cases was limited for policy reasons; To help the jury trial system take root, it is required to set the target number of cases which must be tried by the jury; Most countries take the citizen participation jury system as the necessary procedure in trials. In this light, it is necessary to prevent the system from becoming nominal by putting regulations on citizen participation in trials as a juror and limiting the scope of crimes in relevant laws.

- Preparing specific measures for arbitrary management of exclusion reasons and low rate of public participation in trials: Two important factors of reducing the number of cases involving citizen participation trials are the limited application of the jury trial to those cases where defendants are agreed to the jury trial, and the exclusion by the court. Thus, it is necessary to expand types of cases applicable to the jury trial, and for certain types of cases the jury trial needs to be mandated. If jury trial is excluded, the reason must be specified.
- Limitation of Appeal: Excessive appeal by prosecutors against those cases where the defendants were found innocent by the jury could be a significant obstacle to expanding the jury trial further. Therefore, it seems reasonable that prosecutors would limit appeals not to go before the court under the excuse that 'misinterpretation of laws actually affects the judgment' on the case of innocence decision by the majority of the jury and the court.
- Securing the appropriate number of jurors: To try by the jury certain category of violent offences that should be punished by the capital penalty, for example, murder, it is required to reflect the general common sense and legal sentiment of the people. Therefore, it seems reasonable to abolish the five-juror system and take the form of law revision to nine in the case of serious crimes.
- Method of jury deliberation and verdict: It is desirable to discuss ways to give more binding force to the jury, considering relatively high rates of judge-jury agreement, credibility towards the jury's capability to make a decision, the necessary expenses of the trial and the effective operation of the jury trial. In the way of jury deliberation, it seems reasonable to keep a simple majority voting rule as it is.

Expected Effects of the Policies

Evaluation on citizen participation in criminal trial and policy directions

- The study evaluated citizen participation in criminal trials which was introduced as part of realizing judicial reform with primary goals of promoting the public participation in judicial proceedings, securing the public trust in trial, and establishing a fair criminal trial system.
- With findings of research and survey, this study suggests policy directions of enacting legislation related to the jury trial and its law governing practices and enhancing the public's law awareness.

Major Key words

Citizen participation in criminal trial, Juror, Jury trial, People's participation in judicial proceedings, Verdict by the jury



Change

Human Behaviors
Community Response
Social System