

**28 June 2018**

## **South Korea: Individual independence of judges must be upheld and protected**

*Bangkok, Thailand* – The International Commission of Jurists (ICJ) is deeply concerned with the allegations that the former Chief Justice and other officials infringed the freedom of expression and freedom of association of individual judges in South Korea. The ICJ urges the Republic of Korea to ensure the individual independence of judges in the country.

ICJ received information that in 2015, the National Court Administration (NCA), under the term of former Chief Justice Yang Sung-tae, submitted proposals to the government of South Korea to create a 'second Supreme Court,' arguing that it would assist in relieving the existing Supreme Court with its caseload. This proposal was met with numerous criticisms from the general public and several individual judges. Allegedly, judges who criticized this proposal were placed by the NCA under surveillance, both in their professional and personal dealings. Moreover, they were prevented from joining international conferences and national professional organizations. Some were also either sidelined for promotions or were not given preference for educational opportunities abroad.

On March 2017, during the term of former Chief Justice Yang, the Supreme Court, through the NCA, created an internal committee to conduct an investigation to look into these allegations. Two other subsequent separate committees were formed to investigate. Finally, on May 2018, under the term of the current Chief Justice Kim Myeong-soo, the latest committee, without releasing a full report, said that it did not find basis to file criminal charges against the NCA and former Chief Justice Yang.

On 18 June 2018, the Seoul Central District Prosecutor's Office initiated its own investigation into the allegations, including the possibility of filing criminal charges against former Chief Justice Yang and some NCA judges.

The rights of freedom of expression and association of judges is recognized in the *UN Basic Principles on the Independence of the Judiciary* and other relevant standards, which also provide for appropriate and fair procedures for holding judges to account for misconduct.

In principle, in matters touching on alleged misconduct by a judge related to the discharge of his or her duties, the ICJ considers that international standards and best practices concerning judicial independence and accountability would require at the minimum that a prosecutor seek permission of a judicial council or current Chief Justice, or other similar superior judicial authority, before commencing a

formal criminal investigation or proceedings against a sitting judge. The ICJ calls on the prosecutors' office to seek such permission and to take steps to demonstrate that it will remain impartial and independent in the conduct of its own investigation. The ICJ also calls on the Supreme Court to initiate a new investigation of its own, including to consider the issues from a judicial professional conduct perspective.

Finally, the ICJ urges the Supreme Court to ensure that interferences into the individual independence of judges in South Korea would never happen again.

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### **Background**

Yang Sung-tae served as Chief Justice of the Republic of Korea's Supreme Court from September 2011 to September 2017. As Chief Justice of the Supreme Court he held a key position in the National Court Administration (NCA). The NCA is in charge of the Court's fiscal affairs, human resources, rehiring, work evaluation, transfer of duty, and promotion of judges.

Former Chief Justice Yang proposed the creation of a 'second Supreme Court' arguing that such body was necessary to take over the numerous appeals cases of the Supreme Court in order that the latter could focus on only politically and socially relevant landmark cases.

The International Human Rights Law Society (IHRLS) is an academic society of judges within the Court that is active in reviewing international human rights norms and advocating for the implementation of the same within the national legal system. The IHRLS planned to hold an academic conference on March 2017, that may have been perceived as involving topics that could lead to criticism of the judicial administrative power held by the Chief Justice.

The NCA announced on 13 February 2017 that judges are prohibited from joining more than one academic society. Then-Vice Minister Im Jong-heon of the NCA also ordered that the IHRLS members to limit their activities.

IHRLS members protested these directives. Reports of alleged massive surveillance and reporting of individual judges critical of the Chief Justice and interference in politically-charged cases then emerged.

Calls to investigate these claims were made. From March 2017 to May 2018, committees authorized by the Supreme Court investigated the NCA's alleged massive profiling, surveillance both in their professional and personal dealings, and allegations of influence-peddling by former Chief Justice Yang.

On 25 May 2018, the third and latest investigating committee released a final report, which indicated that there were documents proving individual judges were monitored.

As of 18 June 2018, the Seoul Central District Prosecutors' Office launched an investigation.

The *UN Basic Principles on the Independence of the Judiciary* provide (article 8): "In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary." The *Bangalore Principles of Judicial Conduct* further provide: "Freedom of expression is vital to a judge's role because as a guarantor of the rule of law, he must necessarily participate in the debate for reforms and other legal issues."

The *UN Basic Principles on the Independence of the Judiciary* further provide (article 9) that: "Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence."