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The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights), and has the honor to refer to the Communication from Special Rapporteur on the Independence of Judges and Lawyers, dated 27 Nov 2018.

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva has further the honor to submit, as attached, the response of the Government of the Republic of Korea and the advisory opinions of the Public Service Ethics Committee for the Supreme Court of the Republic of Korea.

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurance of its highest consideration.

Encl.: as stated

Geneva, 22 February 2019

Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva 10



OHCHR REGISTRY

25 FEB 2019

Recipients: S.P.B./I.J.L
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**Response of the Government of the Republic of Korea to Letter from Special
Rapporteur on the Independence of Judges and Lawyers**

1. Provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors and their relation to the exercise of these rights online

● **Constitution**

Article 21

(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.

(2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized.

(Omitted)

(4) Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom.

● **State Public Officials Act**

Article 65

(1) No public official may participate in an organization of, or join in, any political party or other political organization.

(2) No public official shall engage in the following activities to support or oppose a specified political party or person in an election:

1. Soliciting any person to cast or not to cast a vote;
2. Attempting, superintending, or soliciting a signed petition campaign;
3. Putting up, or causing another person to put up, documents or books at public facilities, etc.;
4. Raising, or causing another person to raise, any contribution, or using, or causing another person to use, public funds;
5. Soliciting another person to join or not to join a political party or any other political organization.

● **Public Official Election Act**

Article 85 (Prohibition of Involvement of Public Officials, etc. in Elections, etc.)

(1) No public official shall engage in an election campaign taking advantage of his/her status.

● **Court Organization Act**

Article 49 (Prohibited Matters)

No judicial officer shall conduct the following acts during his/her term of office:

1. To be a member of the National Assembly or a local council;
2. To be a public official in any administrative agency;
3. To participate in a political movement;

(Omitted)

- Although the above provisions do not explicitly set forth the rules for the use of the Internet and social network services (SNS), they are deemed as the applicable general norms of conduct for judges.

2. Cases where judges and prosecutors in the ROK were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online

● **Information for the disciplinary actions on judges**

No.	Name	Positioned Court	Disciplinary Measure	Reason
1	JEONG, #####	Seoul Central District Court	12 October, 2007 Suspension for two months	The judge repeatedly made claims that are beyond the extent allowed to express reasonable opinions as judge over 20 times during 6 months since 20 February, 2007 by using means such as posting on the judiciary's internal communication network. Such claims include: making repeated demands to take disciplinary action on or impeach the Chief Justice on the grounds that a high court presiding judge is illegitimately positioned during a personnel shift of judges; causing others to suspect that colleague judges experienced advantages or disadvantages in personnel affairs based on how they disposed particular cases, etc.
	LEE,	Changwon	21 February,	Whereas the Court Organization Act prescribes not to

2	#####	District Court	2012 Suspension for six months	open the conference of collegiate panel to the public, the judge, who presided a case that was referred to Seoul High Court and concluded by dismissal of plaintiff's appeal on 12 January, 2007, breached the official duty by posting openly on the judiciary's internal communication network on 25 January, 2012 that the initial and unanimous decision of the panel of three judges was in favor of the plaintiff.
3	KIM, #####	Seongnam Branch Court of Suwon District Court	9 December, 2014 Suspension for two months	The judge wrote a posting titled "The rule of law is dead" on the online bulletin board of CourtNet, which is the judiciary's internal communication network, containing messages that condemn a judicial decision made by another trial panel and expressions that defame the presiding judge of the panel, which was then released nationwide through the media.

- The judge who was given the disciplinary action in No. 1 of the above table made appeal for the disciplinary action and the Supreme Court decided against the plaintiff on 30 January, 2009. (Supreme Court decision 2007Chu127 decided 30 January 2009) According to Article 27 of the Discipline of Judges Act, appeal on disciplinary measure of judges is allowed only once at the Supreme Court.

- Please take into consideration that the names of the above judges cannot be provided in full for privacy purpose pursuant to the Personal Information Protection Act.

3. Codes of judicial ethics or professional conduct which regulate the exercise of the fundamental freedoms referred to above

- **Codes of Ethics for Judges**

Article 1 (Protection of Judicial Independence)

A judge shall protect the judicial independence against all external influences.

Article 3 (Impartiality and Integrity)

(1) A judge should be fair, impartial and upright, and shall not commit acts that may cause suspicion on the impartiality and integrity.

(2) A judge shall not have prejudice or make discrimination on the grounds of kinship, regional or academic ties, sex, religion, economic capacity or social status.

Article 4 (Faithful Performance of Duties)

(1) A judge shall faithfully perform his/her duties and make continuous efforts to enhance the capacity to perform duties.

(Omitted)

(5) A judge shall not openly make comment or express opinion on a particular case except for educational or academic purposes, or to provide accurate information for press release.

Article 5 (Extraofficial Activities of Judges)

(1) A judge may partake in extraofficial activities such as participation in academic activities or joining religious and cultural association, provided that such activities do not undermine maintenance of dignity or performance of duties.

(Omitted)

● **Advisory opinions of the Public Service Ethics Committee for the Supreme Court**

- Pursuant to Article 11-2 (3) of the Supreme Court Regulation on Public Service Ethics Act, the Public Service Ethics Committee for the Supreme Court is publishing advisory opinions for concrete application of the Codes of Ethics for Judges since 2006 to provide clear standards of conduct for judges.

- Advisory opinions related to the matter is listed below and the full text is attached herein.

- Advisory opinion No. 3 (Published on 4 February, 2009): 'Public Comment or Opinion on a Particular Case by Judge'

- Advisory opinion No. 5 (Published on 15 March, 2010): 'Judge's Participation in a Law-related Organization'

- Advisory opinion No. 7 (Published on 17 May, 2012): 'Judge's Use of Social Networking Service (SNS)'

- Advisory opinion No. 10 (Published on 11 March, 2015) : 'Judge's Expressing of Opinions Anonymously in the Internet'

4. Restrictions in the legal system of the ROK to the exercise of these freedoms

- Although the various characteristics of the SNS could be given due consideration, particular normative standards or legal principles regarding freedom of expression, etc. can hardly be applied to the domain; therefore, the norms provided in Question 1 can be applied to both the offline and online areas.

5. Nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors

- There is no statutory restraint that can be applied to judges' exercising of the right to basic freedom. However, though it is not statutory in nature, please refer to the Appendix as the advisory opinion of No. (3) includes relevant information.

6. Scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and prosecutors

- Please see below the relevant part of the Supreme Court decision on confirmation of invalidation and revocation litigation of disciplinary action [Supreme Court Decision 2007Chu127, decided on Jan. 30, 2009. 1. 30.]

(A) Even a judge, when he/she is not carrying out his/her job as a judge, is one of the citizens who is the entity that has the right to freedom of speech under Article 21 of the Constitution. Therefore, a judge as a citizen of a democratic society, has the right to develop and express his/her opinion on the issues of public interest. However, as mentioned above, there is a limit to a judge's right to freedom of speech. His/her such right can be limited by law for the sake of the public interest. Judge's expressing of opinions shall not violate either other's honor and rights, or public order and social ethics. Judge's expressing of individual opinion that degrades prestige or authority of the court is restraint. Expression of such opinions by a judge undermines public trust towards the court and judges, eventually leading to citizens' suspicion on the fairness of exercising of judicial power and triggering distrust toward justice. Therefore, expressing such opinions goes beyond the protective boundary of judge's freedom of speech.

(B) Even when a judge, as one of the citizens, expresses his/her personal opinion on issues of public interest, shall base such opinions on objective facts, and restraint and balanced idea according to appropriate procedure for he/she is an advocate for law and justice. Being self-restraint and having a balanced idea are the most crucial values and virtue demanded of a judge, and such virtues are also demanded in ways judges express their opinions. It is because in light of judges' role, their social influence and their social status, judges' opinions on specific issues, even if they are personal ones, have a profound repercussion in the society. Also, such opinions carry high possibility of misleading others to believe they are true and just. Also, privileges of judges such as guarantee of status and independence as a judge are vested on judges with their status to exercise judicial power. Therefore, such status of a judge is only guaranteed and shall be exercised while a judge carries out his/her judicial duty, and shall not be either used or abused in a way that realizes individual judge's values or world view.

7. Initiatives undertaken by professional associations of judges and prosecutors to raise their

awareness of the risks associated with the exercise of their rights online, particularly on social media

- The National Conference of Representative Judges is an organization where judges autonomously participate to gather and express various opinions, and discuss issues. The rule regarding this organization was enacted after a resolution was passed on February 22, 2018 and pronounced as a Supreme Court Rule on March 7, 2018.
- None.

[Advisory Opinion No. 3]

Public Comment or Opinion on a Particular Case by Judge

When expressing his or her opinion, a judge shall preserve dignity, shall refrain from conducting any activities for which impartiality and integrity might reasonably be questioned, shall not influence the cases of judicial colleagues, and shall preserve political neutrality (the Judicial Code of Conduct 2, 3(1), 5(2), and 7(1)). Further, unless for the sake of of education, scholarly research, or exact media report, a judge shall avoid public commentary of his opinion on a particular case (the Judicial Code of Conduct 4(5)).

A judge shall not be abstained from expressing his or her personal views and criticizing legal points on a case after the final disposition of the case. As a judicial officer and a person specially trained in the law, a judge would contribute to the development of legal systems and jurisprudence by freely expressing his or her opinion on legal issues. At the same time, however, a judge making any public comment on the merits of any pending matter might lead to the perception that the opinion by the judge could interfere with a fair trial or hearing.

In this regard, the Supreme Court Public Service Ethics Commission is referring to situations where a judge must exercise special caution when making public comments on the merits of a particular case.

1. Making Public Comments on a Case Handled by a Judge

A judge may make public comments involving a case when the judge is at scholarly presentations made for purposes of legal education, e.g., at seminars, symposiums, conferences, or at the Judicial Research and Training Institution. Thus, a judge may give explanations through media interviews for the purpose of exact media reports. However, even in the circumstances listed above, the judge shall explain legal points based only on the fact discovered during the proceeding, and the judge shall not appear to justify or defend any of the judge's decisions, opinions, or reasons therein. Also, the judge should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function, or any comments that might detract from the dignity of the office.

Further, a judge should avoid making public comments which may be interpreted as a public endorsement or a statement of opposition towards a certain political party in order to preserve public confidence for impartiality and integrity in performing judicial duties.

Most importantly, to follow the principal that "no conference of a collegiate court shall be open to the public (the Court Organization Act 65)", a judge shall not disclose agreements or opinions from the proceedings of a collegiate court. Therefore, the judge should take particular care to not express personal opinions in public regarding conclusions or opinions of the case that were drawn from the collegiate court in which the judge has participated.

2. Making Public Comments on a Case Handled by Other Judge

The opinion regarding a case should be based on all parties' arguments before the

court and should be a result of thorough examination of the documents presented. Therefore, a judge publicly making any statements regarding a legal conclusion on a case handled by other judges based only on hearsay might substantially interfere with the maintenance of the public confidence of the judiciary.

Furthermore, making a public statement on a case handled by other judges might reasonably raise suspicion of an effort to affect the outcome or impair the fairness of the matter. Thus, the statements might provide a basis for collateral attack on the judgement and lead to otherwise unnecessary appeal procedures.

3. Making Public Comments on Matters Impending before a Court

A judge shall exercise special caution in making public comments not only when a proceeding is currently pending before a court but also when an issue is very likely to come before a court. The reasons are, first, the personal public comments of a judge may be misinterpreted as a formal opinion of the court and, second, the comments may be expected to affect its outcome.

In conclusion, every judge shall exercise special caution to the fact that his or her public comments on a particular case may adversely affect the perception of the judge's impartiality and could make it difficult to preserve a level of respect and confidence in the judicial office. Therefore, a judge should consider the language, intent, and spirit of any comments and strive to be as objective as possible and to not denigrate public confidence in the integrity and impartiality of the judiciary.

February 04, 2009

The Supreme Court Public Service Ethics Commission

[Advisory Opinion No.5]

Judge's participation in an organization

Judges may engage in activities to improve the law, the legal system, and the administration of justice (hereinafter referred as organizational activities). Doing so allows them to enjoy academic freedom and freedom of assembly and association. Judges should be encouraged to participate in organizational activities, but restrictions and limitations should be placed on the activities considering the responsibilities and duties of judges and the general expectations regarding judicial position.

Recognizing this, the Public Service Ethics Committee of the Supreme Court publishes an advisory opinion on judges' engagement in organizational activities.

First, a judge may participate in organizational activities that do not detract from the dignity of the judge's office, reflect adversely upon the judge's impartiality, or interfere with the performance of a judge's official duties. A judge should keep in mind that performing judicial duties and obligations takes precedence over exercising his or her freedom of participating in organizational activities (4(5) of Judicial Code

of Conduct).

Second, a judge shall not engage in any political activity and a judge shall avoid organizational activities that impair an independent, fair, and competent judiciary and may bring up suspicions of impropriety in any activities (1, 3, 7 of Judicial Code of Conduct). A judge shall refrain from engaging in public debate as part of organizational activities because doing so would create the appearance of impropriety and appear to compromise the impartiality of judicial decisions.

Third, a judge shall not participate in organizations in which composition or operational practice is not disclosed and is thus dubious to the public, or organizational activities that create the appearance of providing favors and preferences to its members based on prior relationships. Membership by a judge in such organizations may not only raise questions about the dignity of the judge but also give rise to perceptions that the judge's impartiality and integrity are impaired.

Fourth, a judge shall not join an organization whose financial information is not reliable, transparent, or accurate, nor shall he solicit or receive operating funds from those organizations which have an interest in pending or impending cases.

Last, a judge should remain knowledgeable about the organization's activities in order to regularly reassess whether participation in the organization continues to be

appropriate and to determine whether organizational activities do not conflict with the code of conduct due to changes in the operational direction or plan of the organization.

Judges shall take as much caution in participating in organizational activities as they do in performing judicial activities in order to avoid eroding public confidence in the judiciary due to the suspicion of improper conduct or the appearance of impropriety.

March 15, 2010

Public Service Ethics Committee of the Supreme Court

[Advisory Opinion No.7]

Judge's Use of Social Network Service(SNS)

'Social Networking Service' hereinafter referred to as 'SNS' has a feature that enables swift communication and forming various personal relationships. However, communications through the SNS are done instantly. Information updated in the SNS is spread without the user's actual intention and can continue to exist. Therefore, it is undeniable that communications through the SNS has the characteristic of being public.

Considering such characteristic of SNS of being public, Public Service Ethics Committee for the Supreme Court proposes advisory opinion on the things that judges should be mindful of when they use the SNS in line with the Judicial Code of Ethics.

First, judges must understand the characteristic of the SNS and how to use it correctly in order to prevent any unintended consequences in the process of using the SNS. Also, judges should be cautious: when uploading posts related to personal information, when setting the range of making public their posts, and when managing posts written by others in their own SNS.

Second, even when using the SNS, judges must retain their dignity by

complying with the Judicial Code of Ethic, act in a way fairness and integrity of judges do not become doubtful, be careful not to display bias, discrimination, or not to create any misunderstanding.

Third, in the SNS, when networking with lawyers or others who might become parties to their case, judges should not create any appearance that might raise question about judge's fairness. If a judge faces a situation where doubts can be raised about fairness as a judge, the judge should immediately stop networking or take some appropriate measures.

Fourth, because of the characteristic of the SNS being public, judge are refrained from making comments or from expressing his/her personal opinions on the SNS about any specific case(refer to Advisory Opinion No.3 "Public Comment or Opinion on a Particular Case by Judge). Judges are also refrained from giving legal advice or any specific information to anyone about a particular case.

Fifth, even when expressing social or political issues on the SNS, judges must retain dignity based on self-restraint and a balanced thinking. Judges must act cautiously not to be at the center of social controversy, or not to create any appearance that might raise concerns about judge's fair trial in the future.

May 17, 2012

Public Service Ethics Committee for the Supreme Court

[Advisory Opinion No.10]

Judge's Expressing of Opinions on the Anonymity in the Internet

As the Internet advances at a rapid pace, means to communicate through the Internet has also become various. Judges are increasingly expressing their opinions on the Internet through various ways including uploading their posts, etc.

As a judge is also an entity whose fundamental right to free expression is guaranteed under the Constitution, he/she can freely express opinions in the Internet space. However, there is limit to the freedom of expression by a judge. Such personal opinions expressed by a judge should not violate other's honor and rights, public moral, social ethic, not to mention dignity or authority of the judiciary(Refer to the Supreme Court Decision on January 30, 2009, case no. 2007CHU127).

In particular, when a judge anonymously uploads posts about his opinion in various Internet portal sites, or when a judge uploads posts in a closed Internet space where reading such posts are limited to certain people, such as closed Internet cafes or blogs, judges might be tempted to upload posts that are inappropriate in its format or contents, going beyond the parameter of judge's freedom of expression and taking advantage of being anonymous and closed where the judge can hide

his/her status.

However, uploaded posts in the Internet, regardless of its being anonymous or being only public in a closed Internet space, are stored for a long time and easily spread. The identity of the person who uploaded the post can also be traced through various ways. Therefore, it is not guaranteed that the contents of the post or the identity of the person who wrote the post will not be revealed. If a post uploaded in the Internet by a judge without revealing his/her status as a judge is inappropriate in its contents or format, and when the contents of the post and the identity of the writer are somehow disclosed, then the dignity of the judge will be undermined, not to mention, public confidence in fair trial.

Therefore, the Public Service Ethics Committee for the Supreme Court proposes points judges should bear in mind when uploading posts in the Internet anonymously or when uploading posts in closed Internet spaces where reading such posts are limited to certain people.

Even when uploading posts in the Internet anonymously or when uploading posts in closed Internet spaces where reading such posts are limited to certain people,

First, judges should neither use any expression that can mar dignity of a judge such as defamation, nor expressions that are offensive, threatening, obscene and vulgar.

Second, judges should not use any expression that plainly displays

prejudice or discrimination against race, age, and region, not to mention aversive expressions against the socially vulnerable or minorities. It is because, if the person who uploaded the post is revealed to be a judge, then such expressions not only undermine dignity of the judge himself, but can also trigger serious distrust in the fairness of a trial that the judge is currently in charge of or will handle in the future due to the prejudice revealed from his post.

Third, judges should not reveal contents of settlement of a case that they handled, not to mention undisclosed contents of a case that they found out during the procedure. Judges should not disclose personal information of parties. Also, it is desirable for judges not to unilaterally emphasize legitimacy of a trial that they handled and not to express any personal opinion about contents of the trial which can lead to unnecessary misunderstanding.

All judges must bear in mind that even if their posts are uploaded anonymously in the Internet, there is possibility that somehow such posts can be disclosed. Also, judges should be mindful that they should always be cautious not to be involved in any incident that can undermine dignity of a judge or can raise question about fairness of their trials.

March, 11, 2015

Public Service Ethics Committee for the Supreme Court