Dispute Resolution System and Practices in Korea

Korea Association of Mediators
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1. Basic Frame of Mediation in Korea
Triangular Committee of Mediation in Korea

◆ A typical format of mediation in Korea is that
  ▪ A mediation committee consists of three part-time members;
  ▪ One of the three members is a chairman;
  ▪ The chairman suggests a mediation proposal;
  ▪ Disputants have rights to accept the proposal or not.
Background of Triangular Mediation Committee

- Political triangle reflects **check and balance** in Chosun Dynasty.
  - Inspector -> Bureaucracy -> Personnel -> Inspector
- The separation of the three branches of government reflects **check and balance** in modern politics.
  - Administrative – Legislative – Judicial Branches
- Three judges participate in the consensus trial, reflecting **check and balance**.
  - A party may appeal to the consensus trial when he or she objects the judgement made by a judge in the single trial.
Philosophy of Triangular Mediation Committee

= Check & Balance

◆ Committee members rule disputants.
◆ The committee renders award / solution.
◆ A single mediator is not trustful and so three members needed.
◆ Three committee members conduct check and balance.
◆ Committee members should be high ranked, high scholars, social leaders, good personality so that they could be respectable and rule disputants.
2. Mediation Systems in the Public Sector
A. Judicial Mediation

◆ Civil Mediation
◆ Family Mediation
◆ Criminal Mediation
Procedure of Civil Mediation

- Apply for Mediation
- Bring a Lawsuit
  - Decision to refer to Mediation
    - Judge in charge of Mediation (JCM)
      - Mediation by JCM
        - Decision of No Mediation
    - Direct Mediation by the Reception Court
      - Mediation by Full-Time Mediation Members
      - Mediation by Mediation Committee *
        - Decision Replacing Mediation
          - Confirmation
          - Objection
    - Return to Lawsuit
* Mediation Committee

1) Mediation Committee in the Court
2) Mediation Committee Connected with the Court
   - Korean Commercial Arbitration Board
   - Korea Fair Trade Mediation Agency
   - Korea Consumer Agency
   - Korea Association of Beommusa Lawyer
   - Seoul Bar Association
   - Others (10 Organizations)
Procedure of Family Mediation

1. Apply for Mediation
2. Bring a Lawsuit
3. Decision to refer to Mediation

Mediation Committee

4. Success of Mediation
   - Report Divorce
5. Failure of Mediation
   - Apply for Lawsuit
6. Compulsory Mediation
   - Objection
   - Divorce by Judgment

Divorce by Judgment

Oral Proceedings

Judgement

Report Divorce
**Procedure of Criminal Mediation**

1. **Accused or General Criminal Affairs**
   - Decision to refer to Mediation

2. **Mediation Committee**
   - Success of Mediation
     - Non-prosecution
   - Failure of Mediation

3. **Investigation**
   - Prosecution
   - Non-prosecution

*If a serious affair or clear crime*

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**Dispute Resolution System and Practices in Korea**
B. Administrative Mediation

◆ Administrative Judgement-like

◆ Prepositional Mediation

◆ Voluntary Mediation
Administrative Judgement-like

➢ Korea Fair Trade Mediation Agency

Korea Fair Trade Mediation Agency → Fair Trade Dispute Mediation Association → Mediation → Failed → Adjudication → Objection → Administrative Litigation → Seoul Administrative Court
National Environment Conflict Resolution Commission

- Environment Conflict
  - District Court
  - National Environment Conflict Resolution Commission
    - Conciliation, Mediation, Arbitration
      - Objection
  - Seoul Administrative Court
    - Administrative Litigation
- Civil Litigation
National Labor Relations Commission

Individual Labor Disputes (Rights Disputes)

- District Court
- National Labor Relations Commission
- Seoul Administrative Court

Civil Litigation

Adjudication

Objection

Administrative Litigation
Prepositional Mediation

- **National Labor Relations Commission**

  - Collective Labor Disputes (Interest Disputes)
    - Private Mediators
    - National Labor Relations Commission
    - Mediation Committee
      - Very Few Labor Unions
        - Eligible to Strike
      - Success or Failure
Voluntary Mediation

Korea Consumer Agency

- Consumer Disputes
  - District Court
  - Korea Consumer Agency
  - Fair Trade Commission

- Consumer Dispute Mediation Committee
- Mediation
- Adjudication

Transfer
Korean Commercial Arbitration Board

Commercial Disputes

- District Court
  - Civil Litigation
- Korean Commercial Arbitration Board
  - Mediation/Arbitration Committee
  - Mediation, Arbitration
- Fair Trade Commission
  - Korea Fair Trade Mediation Agency
  - Mediation
3. Reality of Mediation in the Private Sector
Private Mediation Organizations

◆ Korea Association of Mediators
◆ Korea Mediation and Arbitration Association
◆ Korea ADR Center
◆ Korea Institute of Conflict Management & Mediation
◆ Korea Center for Social Conflict Resolution
◆ Dankook Center for Dispute Resolution
◆ Conflict Resolution Center, Women Making Peace
◆ Korea Christian Conciliation and Arbitration Institute
Characteristics of Mediation in the Private Sector

- Professional mediators provide mediation services to public or private disputants.
- Mediation is conducted by a mediator rather than a mediation committee of three members.
- Mediation is likely to be combined with counselling or consulting.
- Mediators who are not lawyers hardly provide mediation services for profit probably because of the strict Attorneys-at-Law Act.
Mediators’ Activities in Mediation Fields

- **Private mediation of public conflicts in nuclear waste, dam building, airport attraction, transmission tower, etc.:** A few organizations conduct research and mediation in governmental projects, while civil organizations are involved in mediation of regional conflicts.

- **Private mediation in collective labor disputes:** Labor attorneys deal with this mediation but completed very few cases.

- **Mediation in neighbor disputes:** Some apartments operate this mediation particularly for floor noises.

- **Mediation in family conflicts:** Counselors provide counselling and sometimes mediation to family conflicts.
Constraints of Private Mediation

- Public mediation is provided for free under government control in almost all the fields of disputes, leaving rare rooms for private mediation.
- The qualification of public mediation committee focuses on social status and occupational experience but not on mediation knowledge and skills.
Constraints of Private Mediation (cont’d)

- People and enterprises do not like to pay for resolving their conflicts and disputes in Korea.
- Korean society has a culture people would conceal conflicts inside their own organization.
- Korean government does not support for private mediation systems and for training mediators.
4. Tasks for Innovating Mediation Systems in Korea
Problems of Dispute Mediation Systems in Korea

◆ Administration and courts have developed dispute mediation systems in Korea, causing overwhelming public mediation while contracting private mediation.
◆ Public mediation of disputes is conducted by mediation committees of three part-time members whose qualifications are social status and occupational experiences but not mediation expertise.
◆ Legal system including Attorneys-at-Law Act reveals a hard business environment for private mediators to provide mediation services.
Problems of Dispute Mediation Systems in Korea (cont’d)

- Mediation committee members are not required to have mediation expertise with proper education and experience in mediation.
- There are few qualified certificates or education systems to cultivate professional mediators. Positive promotions or financial supports are not provided for training mediators.
- People and enterprises do not like to pay for resolving their conflicts and disputes in Korea. They don’t realize any inefficiency hidden in the conflicts and disputes.
Tasks for Innovating Mediation Systems in Korea

- Strengthen mediation expertise in the qualification of mediation committee members in the public sector.
- Provide sufficient training to mediation committee members after appointment to their positions.
- Employ professional mediators who can mediate disputes alone efficiently.
- Adopt laws and policies promoting private mediation of various disputes in the private sector.
- Revise Attorneys-at-Law Act so that private mediators could pursue mediation jobs.
Tasks for Innovating Mediation Systems in Korea (Cont’d)

◆ Encourage regional governments, schools, and enterprises to employ or utilize mediation experts in conflict resolution.

◆ Urge the government support for training and schooling of mediators and stimulate mediation in conflict resolution.

◆ Develop systems and networks to exchange mediation experience domestically and internationally.
Thank you for your attention!