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SELECTED ARTICLES FROM MINJU SABOP

(DEMOCRATIC JUDICATURE)

- NORTH KOREA -

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TABLE OF CONTENTS

Article	Page
Necessity and Significance of Unifying Trial and Judicial Administration	1
On Strengthening the Struggle against Criminals Infringing upon Socialist Ownership	10
Problems Pertain To Copyright, Right of Originality, and Inheritance Right in the (Draft) Civil Code of the Republic	19
Criminological Investigation of Documents	29
It Is Unfair to Apply Articles 109 and 173 of the Criminal Code	36

NECESSITY AND SIGNIFICANCE OF UNIFYING TRIAL AND JUDICIAL ADMINISTRATION

/The following is a full translation of an article of the above title written by Yi Pong-gol, Minju Sabop (Democratic Judicature), No 10, October 1959, pages 4-8. The term for trial, "chaep'an" probably has been derived from the Russian "sud" meaning both trial and court. Accordingly, though not exactly the same, the title may be rephrased to read Necessity and Significance of Unifying Courts and Law Enforcement Agencies, that is, the integration of the judicial and the executive branches in the administration of justice. However, in the present translation, all terms are rendered as they are used in the text./

At the personal initiative of Comrade Kim Il-sung, the Expanded Session of the Standing Committee of our Party Central Committee recently has resolved to reorganize the existing industrial control system, thereby establishing the local industrial system in addition to the central industrial system. Based on the legitimate needs for economic development in our country at the present stage, this decision represents a revolutionary measure aimed at the further development of productive power in our country.

In accordance with this historic decision of our Party to reorganize the existing industrial control system, so as to gear the State control system to the changed situations, some ministries and other Central Government organs are to be integrated or abolished. Thus with the abolition of the Ministry of Justice, functions of judicial administrative control over the local courts formerly exercised by the Ministry are to be transferred to the Supreme Court. Consequently, the trial and judicial administration which heretofore functioned separately are now to be unified. This unification is highly significant in the development of our judiciary system. It will strengthen not only the Central Government's guidance and control over trial activities, /trials and court proceedings/, but also enable local judiciary organs (chibang chaep'an kigwan) to realize, through trials, Party policies and platform with flexibility and accuracy thereby contributing greatly to the further consolidation of legal order and

the acceleration of socialist construction in our country.

Ever since the national liberation on 15 August 1945, the judiciary system of our country has developed in a way to meet the objective contingencies arising from time to time. We know that there are two guiding systems in judicial administration. Under one system, judicial administration and trial are separated from each other; judicial administration is entrusted to specialized organs. Under another system tiral and judicial administration are unified and undertaken by the superior courts.

Since our national liberation in 1945 and up to March 1950, the trial and judicial administration were separated from each other both in the capital (chungang) and the local areas. Prior to the founding of the Democratic People's Republic of Korea, the Bureau of Justice (Sabop'kuk), the judicial administrative organ, exercised direct judicial administrative control over the Court of North Korea (the highest judiciary organ in North Korea) and indirect control over the local courts through divisions of justice of the provincial people's council. But, as far as trials were concerned, its supervision over the local courts was exercised by the Court of North Korea (by way) of reviewing appeals or emmergency appeals referred to it.

After the founding of the Democratic People's Republic of Korea in 1948, the Ministry of Justice began to exercise direct judicial administrative control over the Provincial Courts and indirect control over the People's Courts of city or kun through the division of justice of provincial people's councils.

The Supreme Court then became independent of direct control from the judicial administrative organ. It began to organize its own administrative organs while continuing to exercise supervision over trials by the provincial courts and the people's courts. Supervision over trials and judicial administrative control were thus independent of each other both in the capital and in local areas.

However, in March 1950, the trial and judicial administration began to merge gradually until recently the two were completely unified. Pursuant to Cabinet Decision No. 52 adopted on 13 March 1950, "Decision Concerning the Abolition of Division of Justice of the Provincial People's Councils and the Revision of the Table of Organization of Courts of All Levels and State Notaries-Public," the division of justice of the provincial people's councils was abolished and its functions were transferred to individual provincial courts.

Thus, although the control over trial and judicial administration was independently undertaken by the Supreme Court and the Ministry of Justice respectively in the capital, the functions were completely unified on the local level.

After the Korean war, the Directorate of Military Justice (Kunsa Chaep'an Chidoguk) of the Ministry of Justice was abolished in 1956 and judicial administrative control over court martial was transferred to the Military Collegium (Kunsabu) of the Supreme Courts. Furthermore, as a result of the bold measures taken at the end of 1958 to simplify the state structure and to improve the guiding methods, the inspectorate (komyolbu) of each provincial court was abolished and the functions previously performed by the inspectors were transferred directly to the judges.

And with the reorganization of the State industrial control system recently put into effect, the Ministry of Justice was abolished; its functions were transferred to the Supreme Court. Thus the unification of the trial and judicial administration both in the capital and in local areas was completed.

The complete unification of the trial and judicial administration correctly reflects objective and legitimate requirements of the development of our country. It is true, of course, that the separation of trial from judicial administration met objective requirements of our country in the past. But that cannot remain unchanged. Like everything else, once separated phenomenon must be changed in accordance with changing objective realities.

Thanks to the correct economic policies of our Party throughout the post-war period, the unified control of socialist, rationalized production was established in all sectors of the people's economy; our productive power based on this socialist rationalized pattern is being developed very rapidly.

Our country has been transformed from a colonial, agricultural society of the past to a self-sufficient, socialist, industrial-agricultural nation. The people's economy of our country underwent a great change not only in its profile but also in its qualitative composition. One of the most significant changes is the establishment of a local industrial base after the June 1958 Plenum of the Party Central Committee.

On the basis of such an achievement, our Party and Government decided to reorganize the industrial control system as a positive measure to effect not only

the continued development of the central industry, but also to establish a strong local industrial system through further consolidation and expansion of the existing local industrial base. This means that the socialist, rationalized production is geared to the requirements of the development of productive power while its superstructure is accommodated to the economic base.

The reorganization of the State control system cannot be confined merely to the industrial control system; it is the revolutionary demand that it should embrace the whole sphere of State control, including the system under which we work. It is natural then that the judiciary system should be changed along with the changes in the underlying circumstances. Furthermore, the revision of the judiciary system is related directly to the fact that judiciary organs did perform many tasks in the past under the leadership of our Party.

After our national liberation on 15 August 1945, the judiciary organization of the Japanese imperialists which had oppressed and exploited the Korean people was completely liquidated by our people's government. In its place a new democratic judiciary system was established. In this connection, judiciary organs supporting the Party leadership, played a positive role in carrying out the democratization of judicature. Furthermore, staffed with a neucli of competent new personnel, who were politically proven and administratively trained through the class struggle, and selected workers and poor farmers judiciary organs have continuously trained cadres and further strengthened their ranks. As a resutl, judiciary organs, under the leadership of our Party, have carried out, with honor, noble revolutionary tasks assigned to them at each stage of revolutionary development throughout the period of democratic reforms, the period of pre-war peaceful construction, the period of the Great Fatherland Liberation War, and the period of post-war reconstruction. Especially during the struggle to implement the instructions given by Premier Kim Il-sung before the National Conference of Judiciary Personnel and Procurators held in April 1958, judiciary organs made a great innovation in judiciary work in recent years. Great achievements were recorded in their work to liquidate the injurous effects of Rightist defeatism advocated by anti-Party counter-revolutionary factionalists. That group attempted during the post-war period and especially in 1956 to ignore the Party's leadership over judiciary organs and intended to paralyze the functioning of the proletariat dictatorship

exercised by judiciary organs under the pretext of "independence of judgeship," or "the promotion of law-abiding spirit." Judicial organs also achieved great progress in consolidating the Party ideological system among the judiciary officials, in strengthening further the functioning of the proletariat dictatorship and in the thorough execution of the Party judicial policies that the judiciary ranks have been staffed by red warriors infinitely loyal to the Party Central Committee and Comrade Kim Il-sung marks another important achievement in recent years.

In the past ideologically unsound heterogenous elements or even opportunists stood among the ranks of the judiciary. Today the ranks are filled with trustworthy officials selected mainly from the workers and poor farmers, thus the political administrative level of the officials has been enhanced.

As described above, under the correct leadership of our Party, the democratization of the judicature has been strengthened further. The ranks of the judiciary streamlined (chongbi) and strengthened. Party ideological system has been consolidated further among the judiciary cadres; they all have been made infinitely loyal to the cause of the Party and the revolution. Consequently, there is no longer any need for the independent existence of the judicial administrative organs. Furthermore, the reorganization of the judiciary system was put into effect out of the necessity to protect fully the socialist gains won by our people from infringement by our enemies and to insure positively the successful execution of new revolutionary tasks presented to our Party.

American imperialists and treacherous Syngman Rheeites, fearful of the achievements of our socialist construction, are plotting and agitating constantly to destroy our economic and cultural construction. The greater heights we reach in our socialist construction, and nearer they move toward the brink of collapse, the more devilish the American imperialists and Syngman Rheeites become in their conspiracy to destroy our socialist system.

On the basis of achievements made through the implementation of the First Five-Year Plan, our nation will enter the Second Five-Year Plan period in 1961 after a one-year /1960/ transition period during which the development of the people's economy is to be adjusted and achievements further consolidated. The Second Five-Year Plan will be a decisive stage in the building of socialism.

The successful fulfillment of the Second Five-Year Plan will transform our country within the near future into an advanced socialist industrial nation. By then the material base for the peaceful unitification of our Fatherland will be further consolidated. That in turn will deal a heavy blow to the American imperialists and Syngman Rheeites who are approaching the brink of collapse. That is why American imperialists and treacherous Syngmah Rheeites plot so devilishly for the destruction of our socialist construction.

To protect fully the gains won by socialism against destructive agitations conducted by American imperialists, treacherous Syngman Rheeites, and all other counter-revolutionaries, and to accelerate positively our successful socialist construction, especially the successful execution of new revolutionary tasks laid before the Party, it is extremely necessary that the local courts should be further strengthened, their role enhanced, and the supervision over trials and judicial administrative control be organically unified through the revision of the control system, so that Party policies and platform can be realized more promptly and correctly through trials. For this reason, the recent revision of the judiciary system is not merely a 'daily businesslike' (silmujok) technical procedure, but a measure of great political and economic significance. At the same time, it is a reorganization aimed to pool all efforts for new struggle and to lay important groundwork preparatory to insure a successful new transformation. It is for these considerations that the recent revision of the judiciary system was adopted.

As mentioned earlier, the unification of the trial and judicial administration makes it possible to realize promptly and correctly through trials the Party and Government policies. The thorough execution of Party policies and platform through trials calls for the unification of supervision over trials and judicial administrative control. Though separated from each other in the past, two supplemented each other and worked together in close coordination.

For example, in the past, the Ministry of Justice had errors in trials uncovered by judicial administrative inspection corrected by the Supreme Court through an emergency appeal. Also it issued guiding directives to lower court on the basis of the study /review/ of trial proceedings. On the otherhand, whenever organizational defects were found in the course of trial supervision over lower courts, the Supreme Court would inform the

Ministry of Justice so that they could be corrected by the Ministry administratively. Especially in issuing directives to lower courts for the execution of judiciary policies of the Party, /the Ministry of Justice and the Supreme Court/ took uniform action by issuing joint orders and joint directives.

This close association of trial supervisory organs and judicial administrative organs in the past despite the differences in their method was accounted for by the fact that they had the common objective to realize the Party judiciary policies through trials. For this reason, it is more purposeful to assign to the superior courts, directly conduct trials, apply statutes, and guide the execution of Party policies through trials, not only trial supervision, but also judicial administration, than to leave the function of judicial administration to judicial administrative organs who are not directly engaged in conduct of trials or application of statutes although they likewise direct the execution of Party policies. Furthermore, the unification of trials and judicial administration ensures unified guidance and strengthens guidance and control over trial activities.

When the trial and judicial administration were separated in the past, supervision of trials was performed by the judges of superior courts by means of review of concrete individual cases (mostly appeals and emergency appeals) already dealt with by the lower courts. As a result, superior courts were not closely linked to lower courts and did not know the full scope of the work of the latter. Consequently, their guidance was predominently one-sided. It is evident that without close association with the lower echelons no correct living guidance can be rendered by the superior echeclons. And incomplete grasp of situations in lower echelons and one-sided guidance inevitably create formalism and weaknesses in the execution of Party policies. Such defects can be remedied of course through judicial administrative inspections. But where trial and judicial administration are separated the correct essence of individual cases cannot be grasped fully even through administrative inspections. The unification of trial and judicial administration, therefore, would ensure not only the elimination of such inconsistencies and achieve full substantive understanding of the lower courts by the superior courts, but also make it possible to correct manifest defects in time.

In the past, errors in trials by lower courts

uncovered by judicial administrative organs through inspections or in the course of a general evaluation of their inspections had to be referred to the Supreme Court for their correction for the judicial administrative organs had no corresponding jurisdiction. This naturally entailed a certain delay in effecting the necessary corrections.

As the Supreme Court itself had to understand first the substance of cases referred to it, the institution of corrective measures, which the Supreme Court found to be necessary to mend the organizational defects in the work of the lower courts, was equally and inevitably slow /since it had to go through the Ministry of Justice/.

With the unification of the trial and judicial administration, errors in trials or organizational defects can be corrected promptly and in time. Furthermore, the unification ensures uniform guidance and, in turn, successful execution of tasks by the lower courts.

Although the Supreme Court and the Ministry of Justice in the past did adopt common steps in guiding the local courts, they could not exact complete unity in their guidance, thus causing certain difficulties to the work of the lower courts. For example, it could happen that when a lower court conducted a trial in accordance with directives from the Ministry of Justice, the Supreme Court, with an opinion different from that of the Ministry, could reject or modify the judgment pronounced by the lower court. In such a case, the lower court would be bewildered, not knowing which way to follow. Some lower courts would follow the opinion of the Ministry of Justice while others follow that of the Supreme Court.

All of our judiciary organs must act in unison in accordance with the unified will in the course of executing Party policies. Not until then can Party policies be correctly executed. Without the unity in trial activities, the socialist law abiding spirit (chunbop'song) cannot be consolidated. For this reason, the unification of the trial and judicial administration recently put into effect is highly significant in that it ensures unified guidance and exacts unity in trial activities.

Finally, in addition to reorganizing and further strengthening guidance as mentioned above, the unification of the trial and judicial administration also builds up the local courts and enhance their originality the part they play. The abolition of the Ministry of Justice and the transfer of its functions to the Supreme Court have

made it possible to assign competent officials to local areas. Also with the abolition of the Ministry of Justice, some of the guidance functions previously performed by the Ministry have been transferred now to the provincial courts. All of these measures have further strengthened the local courts and enhanced their role. At present, it is of highly significancethat the principle of democratic centralized government is further strengthened in judiciary organs and that the role of local judiciary organs is enhanced. It is well known that most of the criminal and civil cases are disposed of by the People's Courts and Provincial Courts. The Supreme Court is largely to guide local courts although it deals with these cases within the statutory limit. Therefore, success or failure of the Party judiciary policies is dependent largely upon whether or not the local courts are strengthened and their role enhanced. For this reason, measures recently taken by the Party to strengthen local judiciary organs must be correctly understood and all available originalities should be manifested in the execution of Party judiciary policies.

The revised judicial control system will strengthen further Party leadership as well as control by the central judiciary organization over trial activities. It will build up also local judiciary organs and enhance their responsibility and role thus making it possible to execute correctly Party judiciary policies. Thus, our judiciary organs provided with all the conditions and possibilities necessary to execute Party policies in the future.

The remaining central problem, as Comrade Kim Il-sung stated before the Expanded Session of the Party Committee of the Hwanghae Iron Works, is that every official must evaluate correctly given conditions and possibilities,must set forth an order of priority to all assignments and concentrate his efforts to the central key of the task. Each judiciary official must elevate constantly his own political administrative level, revise and adapt promptly his procedures to changed realities, and devote all efforts to the honorable execution of the Party and revolutionary tasks assigned to the judiciary organs.

ON STRENGTHENING THE STRUGGLE AGAINST CRIMINALS INFRINGING UPON SOCIALIST OWNERSHIP

/The following is a full translation of an article of the above title written by Yi Chong-son, Minju Sabop, No 10, October 1959, pages 9-12./

The socialist transformation of the relations of production has already been victoriously completed in the northern half of the Rebpulic, and /the nation/ is marching forward toward the high goal of socialism.

Socialist ownership is the economic foundation of the Republic, the source of prosperity and progress of the Fatherland, as well as of advancement in the life of the people. The task to protect this socialist ownership against all sorts of infringement by criminals is not only the task of all-out people's struggle for the ultimate victory of the revolution in general, but also one of the important missions of the internal security (namu) organs, procurator offices and courts (chaep'an Kigwan) in particular.

As early the Third Expanded Session of the Executive Committee of the Provisionsl People's Council of North Korea, Comrade Kim Il-sung stressed the need to wagea merciless struggle against all sorts of wasteful phenomena, fraud and embezzlement, and called for an uncompromising struggle against such non-public (pigongminjok) thinking such as to care only one's own life and pleasure at the expense of the public, to fail in safe-guarding State properties. The new people's moral must be rectified so that they will hold the common interest of public life dearer than their private interests and strive to protect State properties. Again on 20 November 1958, speaking before the National Conference for the Orientation of Agitators (Chon'guk Sondongwaon Kangsuphoe), he instructed that the people should be indoctrinated with the spirit of holding properties of the State and cooperatives dearer than their own.

The struggle against criminals infringing upon socialist ownership is of great importance not only from the economic standpoint -- to protect properties of the State, social, and cooperative groups, -- but also from political-ideological standpoint, that is, to indoctrinate the people with communist ideology. The old ideological vestige of capitalism has not yet been completely liquidated

from our consciousness. Furthermore, horrified by the rapid progress achieved in the northern half of the Republic, American imperialists and treacherous Syngman Rheeites, vested in the southern half of the Republic, are crazily plotting to inject continuously the hostile ideology of capitalism and attempt, by all vicious means, to infringe upon the ownership of the State and social cooperative groups. This institution of socialist ownership represents not only an important war-gain (chonch'imul) of our people, but also constitutes the basis of the development of the people's economy and advancement of the life of the people. All of these phenomena are indicative of the need to guard the war-gain of socialism like an iron-clad fort and further strengthen the struggle against criminals infringing upon it.

Under the correct leadership of the Party Central Committee and Comrade Kim Il-sung, we made considerable progress in our struggle against criminals infringing upon socialist ownership as well as in the struggle against counter-revolutionary factions. But, such a struggle was not carried out at a high political level as demanded by the Party on account of the failure to liquidate completely the injurous effects of anti-Party agitation (ch'aektong), anachronical legal thinking, and passiveness in the struggle against crime, all of which were implanted by anti-Party and counter-revolutionary factions and their running dogs who crept into judiciary sector. As a result, devouring and waste of State properties by class-wise rebellious fellows who long infiltrated State organs or the deprivation of these properties by undesirable loafers were not dealt a heavy blow.

Thus, the intensification of the struggle against not only counter-revolutionaries no doubt but also all criminals who infringe upon socialist properties calls for, first of all, decisive liquidation of the injurious effects of factionalism, elimination of anachronical bourgeois legal thinking, and rectification of Party ideological system in the judiciary sector. Second, it demands the internal security organs, procurators' offices, and courts to possess a correct understanding of the significance of the struggle against criminals infringing upon socialist ownership and to carry a positive struggle in reality.

Just as an attack on an enemy fort requires a full grasp of the adversary's circumstances, the successful execution of the struggle against criminals infringing upon public properties of the State and the people

requires full study and understanding of the ways, means, and methods by which such crimes are committed. Infringement upon socialist ownership can be divided into two broad categories. One is outright plundering wuch as avarice (t'amo), waste, theft, robbery, fraud, etc. The other crime is related to official functions including ultra vires, abuse of power, negligence of official duties, etc. The source of crime of the first type is found in egotism -- to make personal gains through transfer of the properties of the State and the people to private ownership thereby infringing upon the socialist foundation. The second type is derived mainly from either my-organ-along-ism (kigwan ponwijuui), aloof from the standpoint of the State, or name-seeking (kong-myongjuui) for one's own honor, or unfaithful attitude toward one's official duties. These have been substantiated by cases brought to light in the past. For example, there were a considerable number of cases during the early organizational period of producer cooperatives and sales cooperatives, petty bourgeois class crept into these cooperatives as cadres, turned these institutions into their own profiteering grounds, and devoured and wasted cooperative properties worth millions of won. Even now, a considerable portion of crimes committed in the commodity circulation sector and cooperative groups consists of infringement upon properties. This goes to indicate that there remains still in these sectors injurious vestige of bourgeois ideology and that a considerable number of greedy fellows still remain unliquidated.

The crime of infringement upon socialist ownership also exists in industrial plants, enterprises, cultural and health organs, transportation sector, and, other State organs. Cases thus far brought to light clearly indicate that a large proportion of crimes of infringement upon State properties has been committed in plants, enterprises, and transportation sector through abuse of power, ultra vires, negligence of official duties, etc. Also crime committed through direct devouring of properties behind (hubang pumun) these organs is not inconsiderable. In the cultural and health sector a considerable number of criminal cases are also economic crimes. Attention is drawn to the fact that especially in the health sector, most of the crimes committed are vicious and socially intolerable. For example, doctors or nurses of hospitals who are entrusted with the matter of life or death of their

patients swipe costly drugs into their pockets and give patients either mere destilled water or other cheap injections. This kind of crime is so grave that it should not be dealt with merely as an economic crime. It cannot be evaluated merely within the confines of the value of deprivation or within a general frame of crime of plundering.

Current cases also indicate that the crimes were originated at least three or four years ago. A large portion of the crimes is committed by habitual criminals, ex-covicts who went through orientation process before /previously served in jails/, and remorseless fellows who continuously commit crime of plunder whenever opportunity arises despite their confession of previous errors before the Anti-Plunder Struggle Committee (Pant'amo T'ujaeng Wiwonhoe). In terms of class origin, they are largely injurious fellows or undesirable loafers who are accustomed to live at the expense of the workers. These criminals have not yet eliminated their capitalist ideology and they persistently cling to their old exploiters' habit. Among these criminals, there are even some who have been sent directly by American imperialists and treacherous Syngman Rheeites or supported by them to weaken or to destroy the economic foundation of the Republic after they have penetrated into State organs. Therefore, we should not give any chance to these fellows who are linked directly or indirectly to spies and saboteurs (p'agoe amhae punja).

Criminals infringing upon socialist ownership are dangerous because they not only undermine directly the economic foundation of socialism, but also hinder the orientation of communist ideology as well as the execution of cultural revolution among the people. For this reason, while further strengthening our struggle against counter-revolutionaries, we should intensify our struggle against criminals infringing upon socialist ownership in close coordination with the former. In the past, some judiciary officials failed to link closely the struggle against crime of infringing upon State properties to the struggle against counter-revolutionaries. They took a nonchalant attitude of "wait and see." Yet as long as American imperialists continue their forceful occupation of the southern half of the Republic and as long as the Syngman Rheeite traitors infest and commit devilish evils in the southern half, we should not cease or even slow down for a moment our struggle against counter-revolutionaries and against those

plunderers who undermine the economic fundation of socialism.

It is extremely important to mobilize the masses in the struggle against criminals infringing upon socialist ownership. Speaking before a meeting of internal security officials. Comrade Kim Il-sung emphasized that "our Party demands the establishment of a revolutionary mass point of view. Each official should work always with the masses and correctly mobilize them." If we orient the masses with the communist ideology, arouse in their minds hostility toward the enemies and do not give any opportunity to criminals, crime of counter-revolutionaries and crime of infringement of socialist ownership can be sufficiently prevented and exposed however deep they may be rooted. The correct point of view has already been planted in the minds of the masses -- they are as hateful of counter-revolutionary criminals as they can be.

However still there are incorrect tendencies such as not to be much concerned with plundering activities, the waste of State properties and properties of social and cooperative groups. Not guarding State properties, nor hating the fellows who infringe upon State properties --these are very harmful tendencies. It is necessary therefore that the nature of State properties and properties of social and cooperative groups and the harmful effects caused by criminals infringing upon these properties upon the execution of the revolution should be correctly, extensively explained and propagandized among the masses so that they can be mobilized toward the struggle out of their conscious voluntary will. To this end, the old view point of internal security officials, procurators and judges to regard that their job is done when they dispose of the criminal cases should be decisively corrected. In close cooperation with Party organs and working people's groups and with living experience and data concerning criminals, they themselves should become competent propagandists who know how to organize extensive explanatory and propaganda task and implement it among the masses.

Next, it is important to deal with criminal cases of infringing upon socialist ownership at the high political level demanded by the Party. At the National Conference of Judiciary and Procurator Officials (Chonguk Sabop Komch'al Ilkun Hoeui), Comrade Kim Il-sung instructed that the laws should be applied from the class standpoint demanded by the Party, namely, from the standpoint of proletariat dictator ship.

But numerous shorcoming still remain in the implementation of this instruction. In dealing with criminal cases of plunder and waste, there is the tendency to dispose of them only in terms of damages or in terms of the mechanical meaning of statutes instead of politically analyzing the class nature of the crimes committed, character and class origin of criminals, etc. This runs counter to the interest of the revolution. This is so mainly because both the injurous effects of factionalists in the judiciary sector and the old ideological view point toward laws have yet to be completely liquidated, and political and economic significance of the struggle against criminals infringing upon socialist ownership has not been correctly grasped.

Without the complete liquidation of the injurous effects of factionalism and the old ideological point of view regarding the laws and without the consolidation of the Party ideological system, it is impossible to ensure a correct political analysis and evaluation of individual cases from the class standpoint or to prevent consideration of individual cases from leaning toward either the Right or the Left.

A certain Kim who worked as a work-team leader of a supply and marketing cooperative was indicted for his criminal responsibility arising from his devouring and wasting of cooperative properties. Later investigation records of the case revealed that class-wise undesirable fellows grabed the leadership of this cooperative. By forming a group of their own, they turned the cooperative into a private profittering ground. While these fellows themselves devoured and wasted cooperative properties, they singled out defendent Kim and laid on him all the blame for their own criminal activities. It is true that the defendant devoured some of the cooperative properties, but it is also true that he later recanted his mistakes, strived with his personal creative initiative to revise the working system of the cooperative with a view to eliminate devouring and wasteful phenomena, and struggled with considerable zeal against injurous segments within the cooperative. Thus the principal object of punishment should have been those injurous elements who turned the cooperatives into a profiteering ground and devoured properties endlessly but remained shameless without recantation of their mistakes. But in the handling of this case, all of those who were primarily responsible for turning the cooperative into a profiteering ground were left unpunished. Only

defendant Kim, who played a certain role for the development of the cooperative, was subjected to punishment. This completely undermined the principle of class struggle and even obstructed the revolutionary work.

The kind of case handling illustrated above is derived from the old legal thinking that "to pronounce the guilty it is sufficient that conditions which constitute the crime are met and that they are sanctioned by formal provisions of the statutes." This case handling is one of examples in which the class character of a case was not clarified and the interest of the revolution from the class standpoint were not adequately guarded.

A problem which merits attention in strengthening the struggle against criminals infringing upon socialist ownership is that harsher punishments should be imposed on habitual criminals, second offenders, cumulative offenders, criminals who wasted a great deal of State properties and class-wise injurous criminals. In making an over-all evaluation of the ideological aspects of criminals who did not reconstruct themselves in spite of the upsurge in the socialist revolution, restless maneuvering of domestic and foreign enemies, and the legitimate policy of leniency adopted by the Party and the Government, they should be branded no less than criminals who obstruct the building of socialism. As such, they should be labeled as serious criminals endangering the society. For this reason, it would be more purposeful to exercise the weapon of the proletariat dictatorship mercilessly against these criminals.

Next, there is the problem to strengthen the pinpointing and handling of criminal cases and to take such measures in the course of handling such cases as to prevent the commission of crime in advance.

To that end, it is necessary that in the handling of cases, on-the-spot trials should be effectively organized. After cases and places have been correctly selected for on-the-spot trials, the trial proceedings should be so organized and executed that the masses are taught sufficient lessons to prevent the commission of crime. For this purpose it is necessary also to strengthen the channeling of data collected through the handling of cases to related organs in time (Party and Government organs, organs where the crime was committed or their superior organs).

There have been numerous cases where the crimes of plunder and waste were committed in State organs and social and cooperative groups on account of their loose

system, order, and discipline, and for the same reasons commission of such crimes was not effectively prevented. Where the system of control, investigation (silsa), inspection, and reporting of the properties of the State and cooperative groups is not rectified, internal order and discipline are loose within these State organs and cooperative groups. Their cadres are complacent. They cannot but become an arena profitable to plunderers. It is also probable that the same sort of crimes is committed because of inadequate political orientation work conducted by cadres for the masses. It is necessary therefore to grasp the concrete causes of these crimes and to organize promptly information channelling (t'ongbo saop) aimed to eliminate these causes so that system, order, and regulation in all individual shops can be rectified and further strengthened. Likewise alertness of both the cadres and the masses can be further stimulated. Ultimately, no opportunity will be afforded to plunderers for their profiteering.

Finally, there remains another important problem to be taken care of. Namely, the problem of accomplices. In handling criminal cases, judiciary and procurator officials should not indulge in mere investigation of one person indicted under one case. They should extend their investigations through interrogations of that person to more vicious criminals who operated behind the scene as well as to cover all accomplices who conspired with them.

It goes without saying that all vicious criminals should be thus indicted in time by criminal proceedings. As for those the application of criminal proceedings is deemed unnecessary, they should be corrected by means of reprimand and persuasion. However, information pertaining to these people should be adequately channeled to appropriate Party and Government organs, shops, and residence districts, so that they can be exposed and criticised by the masses and reconstruct themselves, under the surveilance of the society, not to conspire ever again for any criminal activities.

In the foregoing pages, I have described a number of problems with which the judiciary officials should be concerned in strengthening the struggle against criminals infringing upon socialist ownership. The crux of all the problems lies with the thorough liquidation of the remaining effects of factionalism and the vestige of old legal thinking and the consolidation of Party ideological system. Only then can the judiciary and procurator officials carry out their struggle against the

plundering criminals at the high political level demanded by the Party today and handle correctly individual cases from the class standpoint in conformity with the interest of the revolution. Therefore, through more profound study of the instructions of Comrade Kim Il-sung and Party policies, we ensure, as red warriors, the satisfactory execution of Party tasks raised before the judiciary sector today.

PROBLEMS PERTAINING TO COPYRIGHT, RIGHT OF ORIGINALITY, AND INHERITANCE RIGHT IN THE (DRAFT) CIVIL CODE OF THE REPUBLIC

[The following is a full translation of the above title presented as an aid to the debate of the Civil Code (Draft). No author. Minju Sabop, No 10, October 1959, pages 19-24.]

I. Problems Arising From the Section of Copyright Law

1) In codifying the Civil Code of the Republic there is the problem whether the Civil Code should include the copyright law which is the sum total of norms determining the relations emanating from original scientific, literary, and artistic works. Or perhaps the copyright law should be drafted and promulgated apart from the Civil Code since among the relations governed by the copyright law, there are juridical relations that are governed not only by the Civil Code, but also by administrative code and other laws.

The civil codes of socialist nations take different positions on this problem. For example, the current civil codes of USSR and Czechoslovakia, and the Civil Code of Hungary, which is being prepared, do not incorporate the copyright law. The copyright law presently inforce or being promulgated [the latter being that of Hungary] represents a special independent act.

Treating the peoblem in this manner is indeed very possible. However, since the juridical relations governed by the copyright law constitute, principally, civil law relations and since the Civil Code systematizes various norms that govern civil law relations, we deem it rational to select the most basic and principal categories of the copyright law and incorporate them in the Civil Code. The rationale of this solution to the problem is found also, in our opinion, in supply contracts, construction contracts, and other financial contractual relations. Although they constitute Gegenstand (taesang) governed by administrative law, they are embodied also in the Civil Code. "The Basic Principles of Codification of Civil Codes in the Soviet Union and the Member Republics (Draft)" which was recently referred to an extensive examination in the Soviet Union also takes this approach.

2) There is also the problem of practical significance, namely, the problem whether the Gegenstand (objects) of copyright, i.e. works affected by the copyright law, should all be named in the Code, or general indications of the objects of copyright would meet the needs. It is well known the object of copyright is a product of the creative activities of an author expressed in an objective form easily understandable to others. Where a work is not thus externally expressed in a concrete form, it cannot be an object of copyright and, in turn, cannot be protected under the copyright law whatever scientific or artistic value it may have as a characterization of the ideas of the author. In other words, only works produced as a result of the creative activities of human beings, i.e. the works which express the creativity of authors, can be recognized as the object of copyright. Therefore, various catalogs, telephone directories, etc. cannot be protected by copyright. Consequently, whether a work should be protected as an object of copyright should be determined from the point of view of whether it contains creative elements.

Everyone knows that works protected by the copyright law are different from one another in use, in method of reproduction, and in external expression. There are oral works such as speech, lecture, and report, and written works such as thesis and books, translated works, plays, puppet dramas, musicals, operas, and Korean traditional operas (ch'angguk), sculptures and paintings, dance, pantomimes, photographic works, and others. This is a mere list of examples. Along with the cultural development of our country there will emerge in the future all sorts of new works which will merit protection under the copyright law. For this reason, it will be difficult to record specifically every piece of work in the Code for its protection. Therefore, it would be better, in our opinion, to include only a general indication of the objects of copyright in the Code, and to leave the solution of specific problems to judicial organs. Although it is impossible to specify all the works that merit protection by the copyright law in the Code, a general indication of the object of copyright, accompanied by as detailed a list of examples as possible, is helpful to judicial organs. This problem further gives rise to another, that is whether it is necessary to point out works which cannot become objects of copyright. We think there is no need to do so as long as those works which merit protection by the copyright law are stipulated in considerable detail.

3) The problem of determining the duration of a copyright is of great importance. Under Articles 10 to 13 of the current "Bases of Copyright" of the Soviet Union, copyright holders in Soviet Union in principle enjoy life time benefits. However, the articles also provide for a series of exceptions prescribing a shorter period for some categories of works. For example, copyright on dance, pantomimes, movie scenarios, and movie film, is effective for 10 years, and that on photographs lasts for 5 years for individual pictures and 10 years for photo albums. Copyright of publishers on magazines and other periodicals and encyclopaedia is recognized for 10 years for individual issues as a whole from the date of their publication.

After the death of an author, his copyright is succeeded by his heir at law or heir designated in his will for a period of 15 years from 1 January of the year in which he died. But for a copyright effective only for a limited duration, it is succeeded by an heir only for the remaining period left upon the death of the copyright holder.

Copyright is prescribed only for a limited period. This is derived from the basic premise that the individual interest of copyright holders should be harmonized with that of the entire society. The copyright law is aimed not only at the most satisfactory protection of personal and property interests of copyright holders, but also at the broad dissemination of scientific, literary, and artistic works among the working masses. However from the view point of rendering fuller protection to the right of copyright holders and giving the authors the greatest incentive for creating scientific, literary, and artistic works, and in the light of the keen sense of responsibility and noble moral character of the authors who are the publicists (kongmin) of our country, we think it would be better not to provide any time limit to the use of copyright by its holders. Consequently, it would be appropriate to have all copyright holders without any exception enjoy lifetime benefit from their works and to have their heirs benefit additional 15 years from 1 January of the year in which the death of the original copyright holder occurred.

4) The right to the inviolability of works is one of the most important personal rights of authors. Without the consent of the author no work can be published, staged, or reprinted, nor can any change made to the titles or illustrations of his work. Like all other

personal rights, the personal right of the author cannot be separated from the personality of the holder nor is it alien. Therefore, the personal right of an author cannot be transferred to anyone, even his successors (kyesungin), either during his life time or after his death. After the death of authors, their works still cannot be published or staged without the consent of their heirs as long as the copyright on them is valid. Nor can any modification or change be made to the works, the titles, or the names of authors inscribed on the title sheet, or can any explanatory notes be added to the works.

There remains now the problem of how to deal with the inviolability of works upon the expiration of the copyright. The draft Civil Code does not provide any answer to this question. In our opinion, the Civil Code may have to provide, in the future, a clause guaranteeing the inviolability of works even after the statutory period of copyright protection has elapsed. The clause may state that even though the statutory period of copyright protection has elapsed, no modification or change may be made to the works except with the permission of appropriate organs.

II Problems Arising From the Section of Originality Right Law

1) The originality right law which is the sum total of norms regulating juridical relations emanating from inventions and technical rationalization proposals embraces both civil law relations and administrative law relations. The current Civil Code of the USSR and the Civil Code of Czechoslovakia do not include the originality right law which has been adopted as a separate, special act. The rest of the socialist nations have not yet enacted uniform Civil Code, and it is hard to tell at present whether they will include the originality right law in their future Civil Codes.

For the same reasons expressed regarding the copyright law, we deem it proper to include the originality right law in the Civil Code.

It would be more purposeful to incorporate in administrative laws and regulations, on the basis of basic provisions of the originality right law thus included in the Civil Code, such provisions concerning the procedures of submitting applications on inventions, of examining the timeliness and usefulness of inventions, of issuing certificates and patents for inventions and rationalization certificates for rationalization

proposals, of utilizing rational designs and of protecting State secrets in connection with inventions, of instituting legal proceedings against State organs in connection with the inventions, etc.

2) In drafting the Civil Code, there has been some discussion on the classification of the original designs. The classical classification of original designs, especially the practices of our brotherly nations, is to classify them generally into inventions, technical improvements, and rationalization proposals. There can hardly be any question about inventions which constitute the principal type of original designs. Hence, the problem concerns only technical improvements and rationalization proposals namely whether they should be distinguished from each other. According to Commentaries on Regulations Concerning Original Designs issued on 26 March 1957 pursuant to No. 312 /Decision No?/ of the State Technical Commission (Kukka Kisul Wiwonhoe), technical improvements are distinguished from inventions in that they expedite enhancement of technical levels only within a given sector of the people's economy, e.g., machine industry, metal industry, transportation, power industry, etc., while the latter does the same on a world-wide scope. According to examples given by the Commentaries, technical improvements include the following:

(A) Reconstruction of existing facilities (means or tools of production) and structure (technical processes) into already known /better/ facilities and structure as well as the mechanization of handicraft-type operations;

(B) Replacement of parts of existing facilities and structure with other parts, or the replacement of existing operational methods with other operational or working methods;

(C) Installation of parts of a new type or re-arrangement or operational methods within existing facilities and structure;

(D) Replacement of isolated use of parts and operation process in existing facilities and structure by a comprehensive use, or by eliminating, abolishing, expanding or diminishing these parts and operation process. Rationalization proposals on the other hand do not bring about any essential changes in machinery, facilities, raw material and supplies used by enterprises, according to the Commentaries. They are limited to a

more effective use of labor force, facilities, machineries, raw materials, etc. Rationalization proposals thus include, for example, the proposal for "multi-machinery movement" aimed at increasing the number of machinery operated by a single worker, the method of enhancing labor productivity through division of labor, re-arranging or changing the order of existing parts and operational method, etc.

The foregoing makes it clear that technical improvements are new proposals bearing upon only a given sector of the people's economy while rationalization proposals are those introduced within the scope of a single enterprise or an individual organ. Unlike inventions, which are "proposals bringing about creative solutions to technical problems giving a new qualitative effect on a world-wide scope," technical improvements and rationalization proposals changes the structure of technical processes and facilities or the products of enterprises through the application of ways and means already known or improves the production processes through more effective utilization of machinery, facilities, raw materials, supplies, and labor. In this respect, technical improvements and rationalization proposals are in common. Consequently when specific technical proposals are submitted, it would be difficult to determine whether they are technical improvements or rationalization proposals. And in our opinion, there is in fact no discernible practical significance to distinguish the two. For this reason, we submit that it is more purposeful to combine the two; namely, we prefer to have original designs classified into only two categories: inventions on the one hand and technical rationalization proposals on the other.

3) It is highly important to provide an adequate period of validity for invention or patent certificates. This period should be determined from the stand-point of harmonizing the interest of the designer and that of the society which utilizes the fruit of his creative activities.

It is well known that unlike patented inventions for which patent certificates are issued and which cannot be utilized without the consent of the holders of patent right, the right to utilize the inventions for which invention certificates are issued is retained by the State (cooperatives and social groups may also utilize inventions within the scope of their enterprises).

The designers who possess the invention certificates are entitled to receive compensation according to the procedures and terms stipulated. They have no right whatsoever other than to affix their names, registration numbers or other special names on the inventions with the approval of the organs which issue the certificates. On the other hand, State or cooperative and social groups have unlimited right to utilize the inventions irrespective of the opinion of the invention certificate holders, and in such cases the designers are obliged to cooperate for the realization of their inventions. Therefore we oppose the provision of the draft Civil Code which specified a limited term of validity for invention certificates since there is no need to stipulate the term of validity for invention certificates.

III Problems Arising from the Section of Inheritance Right

1) The former (chongjon) draft Civil Code provided the scope of heirs-at-law --- in the first order: children, spouse, and co-inhabiting parents of the ancestor /deceased/; in the second order: parents not co-inhabiting, brothers and sisters, grandparents, and those who co-inhabited and depended on the ancestor /deceased?/ for more than one year prior to his death and who have no capacity to work. We think the scope of heirs-at-law and their order as provided in the former draft should be re-examined.

First, we hope that in determining the scope of heirs, the new Code will include also a written provision concerning adopted children and step children. Especially in need is a provision on inheritance relationships between adopted children and their real parents and between step-children and their real parents. In our opinion, it would be more purposeful, from the standpoint of the meaning of the adoption system, that adopted children and their offsprings should be equally entitled as the real children and their offsprings would be to inheritance from their foster partnes and their relatives; foster parents and their relatives should be equally entitled, as the real parents and their relatives would be, to inheritance from their adopted children and their offsprings; but adopted children should not inherit properties from their real parents and their relatives, nor should the real parents or their relatives inherit properties of their real

children who have already been adopted by others. For the step-parents and step-children who maintain the same relationships as the real parents and real children in terms of their co-inhabitation and daily relationships, step-children should be equally entitled, as the real children would be, to inheritance from their step-parents, and step-parents should be entitled, just as real parents would be, to inheritance from their step-children. But in our opinion, step-children, unlike adopted children, should not forfeit their right to inheritance from their real parents, and the parents, too, should not forfeit the right to inheritance from their real children who have become step-children of others.

In connection with the question of the order of precedence for inheritance, the following problems may arise:

(A) Is it rational to base if /the order of precedence/ only on the fact of co-inhabitation with the parents irrespective whether the heirs presumptive have the capacity to work.

(B) Is it necessary to consider the problem of the majority of brothers and sisters in determining the order of precedence.

(C) Is it advisable to divide the order of precedence for inheritance into only two grades, etc.

In determining the order of precedence among the parents, it would be very reasonable to take their capacity to work as the criterion. For example, when a man who supported his parents, who lacked the capacity to work, dies, the first priority for inheritance to his properties should be the parents. By the same token, among brothers and sisters who are to inherit, priority should be given to minors.

In order to reflect fully these considerations, it seems most rational to us to classify the order of precedence for inheritance into the following three grades:

(A) First order: - children, spouse and parents of the ancestor /deceased?/ who lack the capacity to work;

(B) Second order: - parents of the ancestor who have the capacity to work, minor brothers and sisters of the ancestor and those who depended on the ancestor for support for at least one year prior to his death and who lack the capacity to work; and

(C) Third order: - grandparents and major brothers and sisters of the ancestor. Also to be considered in

connection with the order of precedence for inheritance are problems relating to those who, although not included in the scope of heirs, nevertheless have had close relations with the ancestor in their daily life -- for example, the problems of inheritance between parents-in-law and daughter-in-law, between nephews and uncles. There may arise a question whether it would be legitimate for an old couple, long supported by their daughter-in-law, to leave their pro erties to her if they die without heirs.

We believe these people, though apparently not belonging to the category of heirs, nevertheless should be provided by law as eligible for inheritance for all or part of the properties of the ancestor through the decision of courts, if an examination of their relationship to the ancestor and his close relatives (ch'ukkunja), the living condition of these close relatives after the death of the ancestor, scope and composition of the properties left by the ancestor and other considerations warrants their eligibility for inheritance. We further believe that such a provision will facilitate the legan settlement of problems when they arise in practice.

Second, there is the problem of determining the scope of heirs as designated in the will. The former draft code stipulated that only heirs-at-law could designated as heirs in will; that the testator might also dispose of his properties through will to State organs and social groups. Today the main source of private ownership of citizens comes from their own labor performed within the socialist economic sector and wage income. The chief objects of private ownership, savings, houses, private consumer goods, home appliances and furniture, are not obtained through exploitation of others. Therefore we consider it unnecessary to restrict the right of citizens to dispose of their properties through will as long as it does not go against the law or mores of socialist communal life. We think it proper to have a provision in our future Civil Code to enable a testator to leave his properties to close relatives or whomever he wishes when there are no heirs-at-law of any order.

Third, in codifying the Civil Code, we should direct greater attention to the form of will. It should be determined after a careful study of traditional customs, mores, etc. of our citizenry. The former draft Code required wills to be written in a very complicated form such as the notorized documentary form. But as the

conduct of the business of notaries-public has proven, this requirement does not fit the way of life of our people. Therefore, we deem it important to introduce a simpler form, for instance, a will clearly handwritten by the testator himself, or if he cannot write, some other procedure which can prove the validity of the will even at a later date.

Fourth, the system of acknowledging inheritances (sangsokui sungin chedo), like other systems in the inheritance law, deserves careful consideration in the future Civil Code. It is well known that, if we recognize the system of acknowledging inheritances, the acquisition of properties through inheritance does not become effective as long as the heir does not express his consent to the acceptance of the inheritance properties, that is, not until the expression of this consent is given does he replace the ancestor as regards the right to inheritance properties. However, systematic analysis of inheritance cases in our country has led us to conclude that this system of acknowledging inheritances is unnecessary. Consequently, the heir should be deemed as having acquired inheritance properties the moment the inheritance takes place, unless he rejects the inheritance.

With the abolition of this system of acknowledging inheritances, the certificate of inheritance right issued by notaries public should not read "This is to certify that he is the heir and therefore is the possessor of the right to the aquisition of inheritance properties in the future," but "This is to certify that he has acquired the inheritance properties," thereby authorizing the heir to exercise his actual right to the inheritance properties.

CRIMINOLOGICAL INVESTIGATION OF DOCUMENTS

/The following is a full translation of the above title presented as "Date for Preliminary Examiners," in Minju Sabop, No 10, October 1959, pages 39-42. No author named./

Of all the evidences, documents are extremely important as they are highly instrumental in investigating not only anti-State crimes but also cases arising from the plundering of State, social, and cooperative properties. Preliminary examiners should conduct, out of necessity, criminological studies of documents. These studies include the studies on forgery of documents, determination of identity of handwriting in documents, documents written with "dark-appearing" (umhyon) ink /meaning colorless ink which silhouettes with a chemical processing/, and coded documents.

Forgery of Documents

Documents are forged in a variety of ways. The principal methods consist of changing, corroding, and rinsing of letters, adding, modifying, copying, and forging of signatures. When documents are tampered with, that is, erased or scraped with a knife, the surface of the document is damaged, its luster lost, and the fibre over that portion is damaged. When letters are written over that portion, ink is blurred at the last stroke of each letter if written with ink, or concave and convex are formed on the reverse side of the sheet if written with stencil-cutting pen or ordinary pencil. To uncover these signs, documents may be examined with microscope, penetrating light, ultra-violet ray, or iodine steam.

To reveal the original letters in documents that have been tampered with contrast picture, multi-color (punsaek) picture or shading picture of these documents is taken. Where the document has been corroded or rinsed, the luster of the paper disappears, the surface is damaged, there are yellow dots on the spot and reject of chemicals used for corrosion remains on the paper. If written in ink over this part, the last

stroke of each letter is either blurred or changed. The yellow dots are formed on the paper because of the corrosion and decoloring od dye used at in the process of paper making and the dissolution of glue on the surface of the paper. To discover this, various methods may be adopted such as, taking contrast picture or multi-color picture, chemical examination and optical analysis with ultra-violet ray. Ultra-violet ray is used for this purpose because when it is projected over a piece of paper, the surface of the paper illuminates fluorescent light. If there is a corroded spot on the paper there will be a difference in the illumination of fluorescent light because of the physical changes of the paper in that particular spot. For this purpose, mercury, quartz, etc. are used. To reveal the original letters on the part corroded or rinsed, it may be subject to multi-color picture, radiative analysis with ultra-violet ray or chemical processing.

At times, documents are forged by adding new strokes to original letters, correcting figures or inserting new words. In such cases the examination of the writing materials becomes necessary. A preliminary datum, such as whether the same ink was used, can be obtained by taking a multi-color picture or by radiative analysis (panggwang punsok). More accurate datum can be obtained by using color photometer or through chemical analysis. The chemical analysis may also lead to the identification of the dye or other elements of ink used.

Forgery of signature is done often with pencils, and in such cases the forgery can be discovered by examining signs left by pencil writing with microscope or by taking multi-color picture.

Forgery committed by means of modification or insertion frequently calls for ascertaining the proper order of writing in the documents. To do so, not only the location of letters and other characteristics of writing, but also intersecting points of strokes or wrinkles of paper formed at these intersecting points must be examined.

There have been cases where documents were forged by chopping a part off from one section and adding it to another. Such forgery can be uncovered by examining the physical properties of the paper, its thickness, its surface, and the characteristics of lines along which the paper is cut. These examinations can be performed by microscopic investigation, picture taking, or by

chemical processing.

There have been many cases where the seals and stamps of the documents were forged. In such cases, the content of seals and stamps, the relative positions of the signs contained therein, and their sizes should be studied and compared with one another in detail. The comparison can be made by taking pictures and enlarging them or by simple measurement. When documents are forged by trans-scribing (chonsa) the seal /making another seal with the seal already stamped on the paper without forging or stealing the seal/, signs and marks on the transcribed documents should be examined with a greater care.

Documents written with colorless ink have shown up from time to time in anti-state criminal cases. They are written with chemical solutions and are difficult to detect with naked eyes. But they can be detected by applying corresponding chemicals or other methods. For example, letters written with hydro-'k'inong' (haidurok' inong) appear black when applied with 10 percent nitrogen oxide silver solution (chilsanun Yongaek). Letters written with milk can be detected by spraying chalk powder over the paper and shake it thus silhouetting only the letters. Those written with saliva can be detected by running a hot iron over the paper in which case letters would show up in brown color.

A great deal of coded documents is used in anti-State criminal cases. Recording in codes is made and addressed only to those who already have keys to decipher them. Characters or numbers are used for coded letters. Also used are different words or syllabics previously agreed upon between the parties. Disguised words unrelated to the text are also inserted. To understand such documents, special criminological appraisal should be requested; the keys crucial to the decipher of the document should be closely studied. In coding, signs are widely used. It should be borne in mind for example that even pictures and maps can be used as signs.

There are many criminal cases where the identification of the writer of the document becomes the crucial question. Depending on concrete circumstances, the handwriting of a man may deviate a little. But when he reaches a certain age (around 25 years old), his handwriting possesses characteristics peculiar only to himself. For this reason, whenever the identification of the writer of a document becomes necessary, it can be done by comparing characteristics of handwritings.

Elements to be compared in the identification of handwriting include the level of skill in handwriting, the size of the letters, the interval between letters, the gradient formed in handwriting, the conjunction in handwriting, the pressure with which one writes, the manner of holding a pen or a pencil, the general format of indenting at the beginning of each line, the direction of each line, the habit of connecting strokes, and bodily movements at the time of writing. In addition, the content of sentences, spelling, grammar, the extent of vocabulary used, punctuation, etc. should be studied also so that final identification can be made on the basis of a comprehensive examination.

In investigating handwritings, special care should be taken when letters are written by imitating others or when they are written with the left hand of a right-hander. When one is imitating the handwriting of another, he suppresses his own habits. He imitates the movement of the other so that the whole movement of his writing is rather unnatural. Thus, he is apt to stop the pen when it should not be stopped, the pressure with which he writes is not uniform, the strokes of each letter often become more curved, and he often retouches the strokes, thus unconsciously reveals his own way of handwriting. The outstanding characteristics of letters written with the left hand of a right-hander are that the size and gradient of letters are different /from his right hand writing/ and the vertical strokes are often bent.

It is necessary, to identify the writer of a document, to refer the question to handwriting specialists. When doing so, it is necessary to submit not only the document in question but also a sample of handwriting /the suspect's/. There are two kinds of sample. One is the handwriting done in every day life prior to the institution of judicial proceedings, the so-called free handwriting sample. The other is the handwriting done at the instruction of preliminary examiners or judges, the so-called appraisal sample.

The appraisal sample is divided also into two categories, one written through dictation and the other written at free will either at the instruction or in presence of preliminary examiners or judges.

To appraise handwritings, both the free handwriting sample and the appraisal handwriting sample should be submitted to the appraisers. Samples of free handwriting include private correspondences, notebook,

diary, draft, etc. It should be made absolutely certain that these samples are the handwriting of the man in question if they are to become the free sample for appraisal. For the purpose of appraisal, it is also necessary that these samples should be, as far as possible, similar in form and content to the documents transmitted for appraisal. Likewise, it is better to have free handwriting samples written on the same type of paper, with the same writing materials, and in almost the same period as the document in question.

In collecting appraisal samples, the best way is to have the text of document in question itself rewritten if possible. If the whole content of the text does not permit it, it is still necessary to have individual words or combinations thereof, rewritten as sample.

When suspect is given dictation, it should be given at such a speed as not to permit him any second thoughts. When the suspect thinks as he writes with thought, the dictation should be given at an accelerated speed, with a low voice, and without pointing out commas or periods. Under no circumstances should suspect be permitted to extract text from the documents or samples prepared by preliminary examiners or judges. When a suspect is examined for his signature, it is necessary to have him present seven to eight signatures on each sheet and additional writings of phrases similar to the letters used in the signature [similar to his name]. If the signature is suspected to have been written with the left hand or under a special circumstance, it is necessary to have both the ordinary free sample and a sample produced under the special circumstance mentioned above. And such situations should be referred to both in the samples themselves and in written investigations and should be so attested to by preliminary examiners or judges.

Data submitted to the appraisers should include not only the documents in question and samples of signature, but also a short explanation of the history of the case and data on age, educational background, occupation, eye sight, and clinical record of the suspect. The following incidents occur from time to time in the transmission of data for appraisal of handwriting. Care should be taken to avoid them:

(1) Data are submitted without the prior designation of appraisers. In such a case, appraisers are at loss not knowing what are the problems to be appraised.

(2) Decisions which refer the appraisal of handwriting to appraisers often fail to formulate (chongsikhwa) concrete questions to be appraised. As a result, the questions are often formulated incorrectly or vaguely. In such cases, it is hard to tell which documents are to be appraised or who are suspected of the forgery of the documents or signature.

(3) At times decisions to request for appraisal fail to refer to the concrete parts of the documents that are to be appraised.

(4) These decisions sometimes fail to record which of the documents prepared in connection with the investigation constitutes samples of handwriting or signature.

(5) Data submitted for appraisal at times lack concrete objects for appraisal. For example, there are times when the data did not include the sample of signatures of the nominal person or that of the person being suspected for the forgery of signature.

(6) Data submitted for appraisal sometimes do not include samples of free handwritings or signatures, and if included, they are insufficiently presented. For these reasons, data submitted for the appraisal of handwritings should be accurately collected and formulated.

Upon receipt of these data, the appraisers should study and examine closely so as to enable themselves to render the final decision of the appraisal not on the basis of individual characteristics of handwriting, but on the basis of a comprehensive examination, study, and analysis of all related data mentioned above. The appraisal should be attached with a list of clear diagrams and photographs explanatory of the appraisal process and its final result. This list of diagrams and photographs not only raises the reliability of the conclusion reached but also expedites the critical evaluation of this conclusion by preliminary examiners and judges as one of the evidences presented in the case concerned. The list of photographs should include always a picture showing the investigation of the object of appraisal. Otherwise, preliminary examiners and judges cannot intuitively observe the peculiarities of the objects of appraisal as clarified by appraisers in their appraisal process. The list of photographs has a certain significance as evidence for it reinforces the clarity of the appraiser's conclusion. But this list of photographs can become

evidence only when accompanied by the opinion of the appraiser. Then documents are appraised by taking photographs of the objects of appraisal, probable effects due to optical and geometric margin of error should be taken into consideration. This type of margin of error occurs in the appraisal of handwriting. Unless the effect of such optical and geometric margin of error is taken into account, preliminary examiners or judges may obtain an incorrect representation.

IT IS UNFAIR TO APPLY ARTICLES 109 AND 173 OF THE CRIMINAL CODE

[The following is a full translation of an opinion with the above title presented by Yi Yong-ch'an, Court of Hwanghae-namdo, to the "Readers' Column," Minju Sabop, No 10, October 1959, page 33.]

The Criminal Code of the Republic provides no clause directly envisaging the criminal responsibility for accidental fire. At present there is a practical question in legal proceedings as to what provisions of the Code should be applied in dealing with accidental fire (fire or forest fire by mistake) which caused damages or loss to properties of the State or social and cooperative groups.

Some comrades contend that it is legitimate to apply Article 109 of the Criminal Code to such cases, but I find this contention unfounded. Article 109 of the Criminal Code refers only to damage or loss of properties of the State or social and cooperative groups caused by intentional fire; in terms of the subjective aspect [question of intentional or non-intentional] it is clearly distinguished from cases where such damages or loss of properties of the State or social and cooperative groups are caused by mistake (accidental fire).

On the other hand, there are some who contend that it would be more purposeful to apply Article 173 of the Criminal Code to such cases, but here again I find the application improper. It is true that paragraph 2 of this Article provides for a more stringent punishment of culprits for fire (irrespective of whether intentional or unintentional). But it should be understood that this provision comes under a chapter of the Criminal Code dealing with violation of labor act; furthermore in objective aspect, it envisages cases where fire is caused through violation of operational conditions such as technical regulations, production regulations, and production security designed for the stability of operations in production shops, or through violation of given regulations within explosives plants or other shops where the danger of explosion does exist. Therefore, in objective aspect, there is a clear distinction between these cases and the generally so called accidental fire cases. Accordingly, I consider it improper to apply Article 173 to the latter cases.

On my part, I propose that Article 111 of the Criminal Code be applied to cases under consideration. Although Article 111 ostensibly refers to machinery and tools used in agricultural operations, the act /Article 111 of the chapter that includes Article 111?/ also refers to "other properties," which are to be interpreted to include all properties of the State of social and cooperative groups. Article 111 also refers, in subjective aspect, to damages or loss of the properties of the State or social and cooperative groups caused by careless handling, that is, exclusively by unintentional mistakes. While our Criminal Code has no general provision dealing with unintentional damage (including accidental fire) to properties of the State or social and cooperative groups, it is deemed most purposeful to apply the provision of Article 111 in such cases.

1311

END

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