Abstract of Workplace Dispute Resolution in Korea

Blomgren Bingham, L., Woo Lee, S., & Kyung Chang, W. (2007). Participatory governance in South Korea: Legal infrastructure, economic development, and dispute resolution. *Global Business & Development Law Journal/19*, 375-399. Retrieved from http://www.mcgeorge.edu/Documents/Conferences/JUDIND_BINGHAM_MASTER.pdf

Abstract

In South Korea, conflict resolution can occur through a variety of new governance processes with a variety of names, including alternative or appropriate dispute resolution (ADR), consensus-building, dialogue, and deliberative democracy. This article examines the implementation of new governance processes in South Korea, the control over its dispute system design, recent developments in the Korean Judicial and Executive branches, and the association between these new processes and economic development.

As excerpted from the authors: "For purposes of this article, private conflict resolution is a new governance process conducted by someone other than a judge in the judicial branch of government, an administrative law judge, or a public servant in the executive branch of government. The outcomes of private conflict resolution vary with the context of the system in which the process occurs. Dispute system design is the concept that dispute resolution occurs through a system of steps and rules for the process, where this system is the product of a conscious series of choices and subject to a wide variation of resulting designs. Originally conceived as describing innovations in a collectively bargained grievance procedure (such as grievance mediation), the concept has broader applicability as a useful way to think about the design of new governance processes. There are three basic categories of parties with control over dispute system design: (1) private parties who jointly design the system for themselves; (2) one party who designs it unilaterally and uses superior economic power to impose it on the other party; and (3) third parties who design a system for the benefit of others who are the disputants.

There is a cultural tradition of deference to authority from the Confucian era. This deference has an impact on how Korea will use dispute resolution. For example, it can inhibit party empowerment in mediation. Specifically, the Confucian tradition established a governmental meritocracy in which bureaucrats made decisions intending to build a better society and community. This is more consistent with quasi-judicial or arbitral decision-making. It is an autocratic, not a democratic, legacy for Korea.

Korea makes very limited use of one-party dispute-system designs, such as mandatory commercial and employment arbitration, as those processes are used in the United States. Korea does not have a tradition of independent mediation practice. While Korea has both the legal infrastructure and the institutional capacity for private dispute resolution in the form of commercial arbitration and mediation, with a relatively low reported caseload in mediation and arbitration for commercial disputants, it would appear that private dispute resolution is not yet fully institutionalized in Korea.

Korea is beginning to move from a civil code tradition toward a common law system. The Korean Supreme Court's Task Force on Civil Justice Reform is also undertaking a redesign of the entire national civil justice system to add new forms of ADR—specifically, mediation and arbitration. There will be one new national court-connected dispute system design.

An example of mediation for quasi-judicial functions is the Korean National Labor Relations Commission ("NLRC"), which is an independent commission responsible for the administration of national private sector labor law. The NLRC is a quasi-judicial governmental body, composed of tripartite representatives of workers, employers, and those supporting public interests. The NLRC conducts adjudications regarding unfair labor practices and unfair dismissal, and through its regional structure, executes special labor relations services like mediation and arbitration.

The NLRC is considering improvements in governance to broaden its use of mediation and interest-based negotiation. The NLRC institutional structure includes a national office and regional offices in which there are professionals who serve as labor mediators and administrative law judges. The NLRC also mediates, arbitrates, and adjudicates. Interviewees report that the mediation style is very directive. As is common with labor mediators in the United States, NLRC mediators report that there is the usual head-knocking, arm-twisting, and reality-testing, in which the mediators give unions and management opinions on the appropriate outcome of a dispute. Evaluative mediation is in some ways like advisory arbitration; the parties receive an outsider's view of the strength of their best alternative to a negotiated agreement."