

# Each retrial shall be initiated for the decision to be re-judged: Decision about Case: 2017 Inventory Hab-4

Judge Je-Gal Chang

Second Criminal Division, Korea Jeju District Court

Translated by Chang Hoon Ko<sup>1)</sup> and Michael Saxton<sup>2)</sup> with permit and cooperation of Mr. Dong-yun Yang<sup>3)</sup> and 18 4.3 survivors

## Abstract

On September 4, 2018, Second Criminal Division of Korea Jeju District Court Judge, Mr. Chang Jegal decided that "Each retrial shall be initiated for the decision to be re-judged," at 18 Jeju 4.3 Survivors retrial: Decision about Case: 2017 Inventory Hab-4 : Rebellious or Treasonous Actions and Violations of the National Defense and Security Act. As for A. Rebellious or Treasonous Actions B. Violations of the National Defense and Security Act. Defendant: Defendants are the same as listed in the appendix, Retrial Claimants: The Defendants, Counsel: The Law firm Haemaru (For the defendants), Lead Lawyers: Im Jae-sung & Kim Se-eun, Judgement on the Retrial: The Following report on the Retrial judgement is as stated.

Order : Each retrial shall be initiated for the decision to be re-judged.

Reasons : 1. Basic Facts. The records of this case indicate that each of the following facts can be admitted: A. The petitioners are Jeju residents who were detained by the military and police during the fall of 1948 to July 1949 when the Jeju 4.3 Incident was under way, and were transported to a prison on the main land from December 1948 to July 1949, where they were imprisoned for a certain period of time after arriving. (Here after, According to Article 2, section 1 of the SPECIAL ACT ON DISCOVERING THE TRUTH OF THE JEJU 4·3 INCIDENT AND THE RESTORATION OF HONOR OF VICTIMS. The term "Jeju 4·3 Incident" means an incident in which the lives of inhabitants were sacrificed in the riot that arose on April 3, 1948 starting from March 1, 1947 and in the process of armed conflicts and suppression thereof that took place in Jeju-Do and the suppression thereof until September 21, 1954.) B. The records show that the claimants to deduce the basis for their transfer to the main land and imprisonment thereafter, include the names of the claimants, their age, occupation, residence, plea and verdict, adjudication date, sentence and confinement in prison, which are listed as one column for each of the petitioners. The documents are from the Registry of Convicted Persons from the 12th month of the year 4281 (1948) and the 7th month of the year 4282 (1949) & the criminal records of Claimants, Park, Park, Bu, Yang, Bang, Oh, Oh, Jeong, Jo, and Han. In addition, as part of the fact-finding investigation into the reasons for the appeal, documents related to the execution of military enforcement orders or reduction of sentences for some of the petitioners, which were obtained through fact-finding and document-transfer requests from the National Archives and other related agencies. Beyond these, documents that can directly confirm the original judgement concerning the claimants, such as the indictments, records of trial and ruling, prison transfers and other prison records have yet to be discovered.

### Key words :

Korea Jeju District Court Judge, Mr. Chang Jaegal, Order, Each retrial shall be initiated for the decision to be re-judged, Basic Facts, . The petitioners, Jeju residents, the Jeju 4.3 Incident, the SPECIAL ACT ON DISCOVERING THE TRUTH OF THE JEJU 4·3 INCIDENT AND THE RESTORATION OF HONOR OF VICTIMS, The records, the Registry of Convicted Persons, Claimants, Park, Park, Bu, Yang, Bang, Oh, Oh, Jeong, Jo, and Han., the National Archives.

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Jeju District Court  
 Second Criminal Division  
 Decision  
 Case: 2017 Inventory Hab-4  
 A. Rebellious or Treasonous Actions  
 B. Violations of the National Defense and Security Act

Defendant: Defendants are the same as listed in the appendix

Retrial Claimants: The Defendants

Counsel: The Lawfirm Haemaru (For the defendants)

Lead Lawyers: Im Jae-seong & Kim Se-eun

Judgement on the Retrial: The Following report on the Retrial judgement is as stated

Order

Each retrial shall be initiated for the decision to be re-judged.

Reasons

#### 1. Basic Facts

The records of this case indicate that each of the following facts can be admitted:

A. The petitioners are Jeju residents who were detained by the military and police during the fall of 1948 to July 1949 when the Jeju 4.3 Incident was under way, and were transported to a prison on the main land from December 1948 to July 1949, where they were imprisoned for a certain period of time after arriving. (Here after, According to Article 2, section 1 of the SPECIAL ACT ON DISCOVERING THE TRUTH OF THE JEJU 4·3 INCIDENT AND THE RESTORATION OF HONOR OF VICTIMS

The term "Jeju 4·3 Incident" means an incident in which the lives of inhabitants were sacrificed in the riot that arose on April 3, 1948 starting from March 1, 1947 and in the process of armed conflicts and suppression thereof that took place in Jeju-Do and the suppression thereof until September 21, 1954.)

B. The records show that the claimants to deduce the basis for their transfer to the main land and imprisonment thereafter, include the names of the claimants, their age, occupation, residence, plea and verdict, adjudication date, sentence and confinement in prison, which are listed as one column for each of the petitioners. The documents are from the Registry of Convicted Persons from the 12th month of the year 4281 (1948) and the 7th month of the year 4282 (1949) & the criminal records of Claimants, Park, Park, Bu, Yang, Bang, Oh, Oh, Jeong, Jo, and Han. In addition, as part of the fact-finding investigation into the reasons for the appeal, documents related to the execution of military enforcement orders or reduction of sentences for some of the petitioners, which were obtained through fact-finding and document-transfer requests from the National Archives and

other related agencies.

Beyond these, documents that can directly confirm the original judgement concerning the claimants, such as the indictments, records of trial and ruling, prison transfers and other prison records have yet to be discovered.

#### 2. Judgment on the legality of the cases' appeal

##### A. Concerning the existence of a retrial judgement

(1) Article 420 of the Criminal Procedure Act stipulates that if there are certain qualifying reasons, a "guilty decision" may be requested for reconsideration. As we saw above, other documents related to the criminal records, investigation reports history, military execution orders, and reductions of sentences for some of the claimants were unable to be found. Not only were there claimants who said, "We didn't have a trial in Jeju Island at the time, and we learned about the sentence after we were transferred to the main-land," but also there were claimants who recall receiving a trial on Jeju Island with the process of specifically talking about where they were going. It is questionable whether the arbitrary nature of the military and police dispositions resulted in illegal detention of the claimants to jail, as if they were already sentenced.

Upon further examination, the term 'guilty judgment' refers to the judgment of the judicial institution by which a specific person has violated a penal code in relation to a specific case, and which determines the treatment of an offender according to the law to be applied to the violation, even if such 'judgment of the judicial institution' is recognized to have been made, the judgment of the domestic case or the process of such judgment exists. No data was found directly to confirm that there was a 'judgment of guilt' against the petitioners at the time.

Considering the following circumstances, which can be acknowledged by the records, it is sufficient to recognize that the actual justification or procedural legitimacy of the claimants were violated, and that there was a 'judgment by the judicial authorities' concerning their treatment, and that the petitioners were transported to the main land and were detained in respective prisons.

The Regulations of Criminal Procedure, Article 166 states

In case of request for review, a written request in which a statement requesting the review and the reasons thereof are concretely entered shall be submitted to the court having jurisdiction along with a certified copy of the original judgment and

evidentiary material attached thereto.

The purpose of the above regulation is to ensure that the review court can verify the existence and contents of the decision, and as shown earlier, the judicial institution's judgment on the violation of the penal code by the past review claimants with other data.

In other words, one can acknowledge that there was a guilty verdict with the possibility of Prima Facie to the specifics of the case. However, in this case, the existence of the judgment cannot be confirmed because of the loss of records; due to this fact, the claimants cannot be held responsible.

The petition for reconsideration of the case cannot be considered inappropriate because the claimants' failure to submit a copy of the original decisions were still in accordance with the above regulations.

(A) According to the entries in the Registry of Convicted Persons, the claimants Kim ○○, Park ○○, Bu ○○, Yang ○○, O ○○, O ○○, Im ○○ Jo ○○, Han ○○, and Hyeon ○○ were found guilty for the "Crime of Rebellion in violation of Article 77 of the Criminal Code" in December of the same year after martial law was declared on Jeju Island in November 1948. After martial law was rescinded, the claimants Kim, Kim, Park, Park, Yang, Oh, Jeong, and Hyeon were found guilty for the "Crime of Communication, Correspondence, and Espionage in aid of the Enemy in violation of Article 32 and 33 of the National Defense and Security Act" by means of Court Martial.

In light of matters such as Article 11 of the Japanese martial law, Article 32 of the Act on National Defense Security, Article 33 of the Act on National Defense Security applied to Kim ○○, the petitioner of the Japanese Imperial Household, which declared martial law by designating Jeju Island as a "unreasonable territory" in November 1948, and the provisions of the military review committee at that time.

(1948.7.5) The Namjo Line Do-Government Act was enacted in 1948 and abolished in 1962.1.20, no. 1004 of the Military Tribunal Act. as below)

(Article 64 of the Constitution states, "The President declares martial according to law," but since martial law was not enacted at that time, Article 100 of the Constitution says, "The current law has effect unless it is in violation of this Constitution.")

(B) According to the July 6th and 26th, 2005 testimony of Mr. Ko (Lieutenant Colonel and the Army HQ's Records and Screening Section Chief at the time of the Jeju 4.3 incident) and Mr. Jeong (Member of the Institute for Military History, MND):

The Convicted Persons Registry should include the Military Court establishment order and place of trial, the subjected accused and their charges, the signature or seal of the Commanding officer of the Jeju Island District Head Quarters or the Commanding officer of the 2nd Infantry unit of the Capital Security Forces stationed on Jeju at that time. In addition, the Military Court should have entered into record the name and age, occupation, residence, plea, judgement, sentence date, and penalty of the accused or include the above information into a sealed envelope to be added to the registry at an appropriate time.

The 9th Army regiment enforced the Martial Law order in December 1948, The 2nd Army regiment submitted offenders of the National Defense and Security Act to the Military Court during June and July of 1949. At that time, you had to receive official approval from the President to administer the death penalty in the military courts. Once the trial records were posted to the Army HQ Office of Judge Advocate General, they would confirm the record and directly go to the Police Commissioner to grant permission and then called the local office to let them know that they could administer the death penalty. The remaining indefinite and definite prison sentences from the trial records were then subsequently received and stored.

Considering the fact that the Army headquarters had not taken legal records as it withdrew from during the Korean War and stated to the effect that it the records were either burned or abandoned, and the testimonies of Kim01, Hyun01, O01, Bu01, Yang01, Hyun02, and Jeong01, it is not clear whether the courtroom was properly organized according to the law at that time and if the trials were held in accordance with the procedures set by the law, though it is believed that the court was established and operated on Jeju Island at that time.

(C) The Claimants have given testimony, as for how they were arrested, apprehended, transported to the main-land, and detained in prison, and other related details to that time to this court. The claimants for the purpose of receiving a retrial have made statements in this court, where nearly half of them stating that they had never received anything to call a trial.

(However, in the case of the appeal for reconsideration, Mr Jeong01's statement in this court does not exist and is based on the statement contained in the booklet entitled "4.3 Prisoners who have Risen from the Grave.")

① Not only do the sentences and the date of the sentencing and the place of the sentencing for the claimants listed in the convicted persons

registry correspond to most of the statements of the claimants as previously seen. (Please refer to Defendant Statements Appendix) In the cases of Park01, Park02, Bu01, Yang01, O01, O02, Jeong01, Jo01, and Han○○, are broadly consistent with the details in each corresponding criminal and investigative history records for them (although some of the petitioners do not exactly match the date of the trial and the date of disposition listed in the criminal and investigative history records, they do not deny the identity of the person by such an extent as the crime or sentence is inconsistent).

② At that time, In order to transfer those who were imprisoned at a detention center of some sort on Jeju Island to a prison on the main-land as a convicted prisoner; an authorized decision to make this possible in any form would have been necessary.

(In a report titled "Jeju 4.3 Case Investigation Report," published by the Jeju 4.3 Case Investigation and Rehabilitation Committee, the government and military wanted to manage them separately instead of immediately following the previous decision-making process, but because Jeju lacks prison or detention centers, it wanted to quarantine them from Jeju Island. The only way to send as many as 2,000 people to prison at the same time was to apply Article 32.33 of the National Defense and Security Act," which indicates that the trial by the court was used to transfer and detain inmates at the time to a prison on land. In addition, according to Claimant Han01, When asked at court, "Have you ever been tried at this court?" "I've been tried. I'm trying to get to the main-land," he said.

According to the statement of the claimants, most of them received notice of their sentences when they arrived at the main-land prison, and the prisons where the claimants were transferred to, seemed to be considered and classified according to age, gender, and sentence length. It would seem that the claimants' prison sentences were decided by the time they were sent to the mainland prisons.

③ Data obtained by this court in the course of fact-finding for the reasons for the appeal of retrial are consistent the information of the Claimants listed below:

Claimants O01, Hyun01: Military Direction of Execution Document, Inmate Status Page, Commuted Sentence Page,

Claimant Jeong01: Inmate Status Page, Remaining Sentence Direction of Execution Document, Commuted Sentence Page

Claimant O02: Criminal Record Sheet

Claimant Bu Won-hyu: Criminal Record Card

In particular, the above statement of execution or commutation of sentences, including the fact that

the "judgement" under the Law at that time is not based on the existence of a judgment in any form, is considered to be a difficult document to have been prepared.

It is a separate matter of whether all proceedings, including the filing of charges against the claimants, the proceeding of the trial period, and the ruling, were duly conducted in accordance with the provisions of the Law, and the fact that the claimants were transferred to the main-land and detained as prisoners of criminal detention. There is no other way but to infer that the authoritative judgement of the military court was the basis when deciding to impose the punishments listed on the convicted persons register.

B. in connection with the possibility of making a decision on these cases.

(1) In this case, the names of the petitioners are listed in the criminal and investigation history report, the inmates' identity card, and the investigation data sheet, as we saw earlier, and although they were accompanied by long-term detention and harsh acts, the investigation and classification of the petitioners were conducted on the basis of this, as seen from the back, the investigation and classification of the petitioners were conducted.

Some of the witnesses said that some of the people in custody at the time were armed on the mountain, and others were digging with no knowledge.

Some of the petitioners were investigated for allegedly being a member of the Namro Party, others who were wanted for spying, others who were sentenced to much heavier life imprisonment than others at a military court meeting in 1949, and those who were admitted to the North Korean military during the Korean War and later became prisoners in Jiri Mountain and elsewhere.

It has been 70 years since then, except for the claims and statements of the petitioners, and if there is no data to confirm whether the petitioners committed any particular action that corresponds to the requirements of the punishment regulation at that time, even if all data that the government used as the basis for the disposal of the petitioners at that time were lost, the judgment of the original plan is virtually impossible, and it seems that the process itself of the review process itself will lead to recover the identity of the petitioners.

Moreover, the descendants of those who were killed by the armed forces of the Naro-dang are also present, in some cases the restoration of their identity through the retrial could be another wound to them.

There are concerns about whether it is appropriate to initiate a re-examination, a procedure that can reverse what was judged on the basis of data of previous state agencies.

(2) Since Article 420 of the Criminal Procedure Act prescribes, "If there is a reason for a review, you can appeal a decision for the benefit of the person who is convicted," the requirement for a review under the Criminal Procedure Act shall be the preserve of the guilty judgment and the reason for the review, and the decision on whether or not the appeal meets the above requirements shall be made by the court which has been remitted. However,

The current criminal procedure law requires the prosecution to verify the specific case and the evidence for it, so the court should make a decision on the re-examination and proceed with the original trial as long as the requirements for the re-examination are met.

Furthermore, refusing to make a decision on the re-examination on the grounds of the above concerns goes against the basic concept of criminal proceedings.

The basic concept of criminal litigation is that a court imposes a corresponding penalty on the guilty person by revealing the actual truth of the case, while protecting the innocent from the exercise of the nation's right to punish them. Usually, the former refers to the latter as active realism and the latter as passive realism. Ideally, these two requests for real-life realism would not contradict each other, but because humans are not omnipotent beings, those two requests are always expressed in the form of conflict and conflict with each other, and so human reasoning and historical experiences have led to the adoption of passive real-life realism as the basis of criminal proceedings. It is often described as "If you miss a hundred criminals, you can't punish one innocent person." The outcome of this mission is to avoid the court's assignment to block any chance of recovering their identity by arguing with the concerns we saw before the court in charge of criminal proceedings, which is the primary duty that can't yield to anything, and that is the first duty of retrial prescribed by the law.

3. a judgment on the existence of reasons for reconsideration

The Criminal Procedure Act provides that "when a prosecutor or a judicial officer involved in the original judgment, full trial or investigation based on the court's original judgment or the court's original judgment, or the court's basic investigation of the court, has been proved guilty of his duty by a firm decision" in the Subsection of Article 420

"If a appeal is made to prove a crime as a result of a final ruling under Article 2 of the previous Article 422 Frontier, the decision can be made by proving it to be confirmed if it cannot be obtained," he said.

If the statute of limitations for a crime against a duty set forth in Article 42 of the previous Criminal Procedure Act above is recognized as having a virtual or legal disability for which the offence is no longer convicted, such as when the statute of limitations for the offence has already been completed or the death of the offender, it shall be deemed to be in the "unacceptable" section of the Criminal Procedure Act set forth above.

Article 9 of the Constitution states, "All people have physical freedom. No arrest, detention, search, questioning, punishment or forced labor without law. Arrest, detention, and search must have a warrant for the judge.

However, in the event of the current crime and the fear of escape of the criminal or destruction of evidence, the investigation agency may request a warrant after death according to the provisions of the law.

Anyone who receives arrests and detention is guaranteed the right to seek counsel's assistance immediately and to file a court review of the authorities, and the Criminal Procedure Act.

(1948.3.2 20) as amended by the Military Government Act 176 and enforced.

The regulations concerning arrests and arrests are the same as the "amendment of the Criminal Procedure Act," in which each of the above regulations states that arrests and detention of persons at the time require a warrant issued by a judge in advance or post-mortem, and the arrest period by an investigative agency cannot exceed up to 40 days, even if issued a warrant is issued.

In this regard, the martial law of Japan, which appears to have been the basis of the 1948 Military Bar Association for the petitioners as seen earlier, does not have any special provisions on the exception of this prima facie, and the former Defense Security Law, which was the basis of the 1949 Military Bar Association, provided that "in case of a serious offence which falls under this Act, regardless of the application of any criminal defendant, is prohibited."

The above statement of "adaptation or withdrawal according to circumstances" is not intended to exclude or set an exception to the primacy that the Constitution stipulates.

It is also observed that According to the Register of Convicted Persons., the total number of people who were tried by Military Courts in December 1948 reached a total of 871 and 1,659 in July 1949.

The fact that many of these people were

collectively detained and tried in a concentration camp on Jeju Island in a relatively short period of time.

The Jeju 4.3 Truth Commission collected and researched domestic and foreign data on Jeju 4.3 incidents over a long period of time from September 2000 to February 2003.

The court also inquired and confirmed various documents related to the petitioners, including the National Archives and the Defense Ministry, but the court did not confirm the existence of arrest warrants for those who were tried by the court at the time, nor did it find any records that could have been issued by the court, and the investigation report on the progress of the Jeju incident and the situation. They are believed to have been arrested and detained illegally without prior or post-war warrants and led to a court martial.

In the past, some of the reviewers' statements about their experiences, statements made by the reviewers on each case are consistent in concrete and major respects, and the court statements of the reviewers are not contrary to what is stated on the criminal list, nor do they seem to exaggerate or exaggerate their statements in this court.

Further, the article in the "Jeju 4.3 Incident Investigation Report" that included the cases of the petitioners who were arrested and investigated by the military and police, without trial or trial, was included in the article of "Kim ○○, Kim Heng, Park ○○, Hyun ○○, Hyun ○○, and Hyun ○○, the head of the military court, in accordance with the Criminal Law.

The fact that Kim, Park ○○, Park ○○, Park ○○, Park ○○, Booth, ○○, ○○, ○○, ○○, ○○, and Hyun ○○ were subjected to such harsh acts as assault and torture during the investigation at the time is also well appreciated.

The above illegal detention or abuse of civil servants' rights under Article 194 of the Criminal Code and the Old Criminal Procedure Act is in violation of the provisions on the human custody of the petitioners.

Or, it shall be regarded as constituting a special civil servant assault or misdemeanor as provided under Article 195.

In the case of this case, which is clear that 70 years have passed since then, no specific person has committed such a crime, and that the statute of limitations for each of the above has already been completed, there is a reason for the review of the cases set forth in Articles 420.

("A person who performs the duties of a judge, prosecutor, or police officer or who assists them

in such duties shall be sentenced to a prison term of not more than three years or imprisonment for assault or proficiency in any other person who is a criminal defendant"),

{1948.3. 20 The Military Government Act was amended to 176 and amended to 1948.6.1. The Japanese Criminal Act (1941 Act 61) was enacted by the Joseon Criminal Command.

#### 4. conclusion

If so, the petitioners make the same decision as the order to initiate for a second trial in accordance with Article 435, paragraph 1 of the Criminal Procedure Act.

#### Retrial Verdict

1. 단기 4281년(1948년) 12월 1일부 특명 제29호 및 단기 4281년 12월 25일부 동 수정명령 제39호에 의하여 설치된 제주도계엄지구 고등군법회의의
  - 가. 1948. 12. 5. 선고 판결 중 피고인 김○○에 관한 부분
  - 나. 1949. 12. 9. 선고 판결 중 피고인 현○○에 관한 부분
  - 다. 1948. 12. 10. 선고 판결 중 피고인 오○○에 관한 부분
  - 라. 1948. 12. 15. 선고 판결 중 피고인 부○○에 관한 부분
  - 마. 1948. 12. 26. 선고 판결 중 피고인 오△△, 조○○에 관한 부분
  - 바. 1948. 12. 27. 선고 판결 중 피고인 양○○에 관한 부분
  - 사. 1948. 12. 28. 선고 판결 중 피고인 박○○, 임○○, 한○○에 관한 부분

2. 단기 4282년(1949년) 6월 1일부 육군본부 보병 제2 연대 본부 특별명령 제71호 제1항에 의하여 설치된 고등군법회의의
  - 가. 1949. 7. 1. 선고 판결 중 피고인 정○○에 관한 부분
  - 나. 1949. 7. 2. 선고 판결 중 피고인 현○○에 관한 부분
  - 다. 1949. 7. 3. 선고 판결 중 피고인 오□□에 관한 부분
  - 라. 1949. 7. 5. 선고 판결 중 피고인 박△△에 관한 부분
  - 마. 1949. 7. 7. 선고 판결 중 피고인 김△△, 김□□, 박□□에 관한 부분

#### Defendants Statements.

[Kim,01]

In the fall of 1948, he was arrested and held at a police station for more than a few weeks. One day he was told that he would receive a trial

where he accompanied three soldiers, whom stood him under a banner reading "Article 77: High Treason." He went back to the police station. Later, he was transferred to Jeonju Prison, where he was told by the Prison officer that his sentence was one year.

[Hyun,01]

He was tried December, 8th, 1948, while sitting with three soldiers. He seems to recollect a person who seemed like a lawyer saying, "These people are guilty but I hope they will be shown leniency." As soon as he arrived at Incheon Prison on December 9, he heard the sentence from the leader in the yard.

[O,01]

At the end of October 1948, He was taken to the Seogwipo Police Station for being a member of the Namno (Labor) party. Two weeks later he was moved to Gwandukjeong Pavilion, where he stayed at in a school yard during the day and in the warehouse at night. One day while standing in a lecture hall with three soldiers, they read his name and pronounced, "To be sent to Prison" After arriving at Jeonju Prison, he was told by the Prison office that his sentence was one year.

[Bu,01]

He was arrested by soldiers in early December 1948 and taken to the army barracks where he was interrogated. Later he was taken, tied up, to the courthouse, where three soldiers would call prisoners names and said, "You are guilty of Article 77 (High treason)." It seems like about forty or fifty men were tried at once. On December 20, he was taken to Incheon Prison, where his name was called and told "One Year of Prison."

[O,02]

He was arrested at the end of November 1948 and was held in the Jeju Police station for about a month. On the day of his trial, he was moved to another room and stood in front of a person who seemed to be a judge, The judge told him to move on to the other room. About a month later, he was taken to Jeonju Prison and found out that his sentence was a year when he arrived there.

[Park,01]

He was captured by soldiers around the 11th

month of the lunar calendar in 1948. Within a month, He was dragged up to a court or something similar, where they called him name and said "a year, hard labor in prison." He was then transferred to the Jeonju Prison, where he was told "a year", when he arrived.

[Jo,01]

On October, 26th, 1948, he was asked to go to the Beophwan village precinct station, where he was held and interrogated for about a week. Then he was moved from the Seogwipo police station to the Jeju police station where he was held and interrogated for another 20 or 25 days. He remembers that about 105 people gathered at Gwandeokjeong Pavilion without knowing whether it was a trial or not, and he was told that it was a year, hard labor, in prison after arriving at Incheon Prison.

Im,01

She was apprehended for being related to people who had fled the island and being wife to local Namno (Labor) party chairmen. She does not remember receiving a trial but she didn't not learn about the sentence until she went to Andong prison after going to Jeonju prison.

Han,01

She was apprehended trying to shelter herself from a village being burned during the 10th lunar month of 1948. She remembers being tried somewhere before being sent to the mainland, but she only remembers having her name called. She was told about her one-year sentence after she arrived at Jeonju Prison.

[Yang,01]

He was arrested in the winter of 1948. On the day of his trial, he was taken with many others to a large auditorium at the Jeju Police Station where they were seated in front a rank-and-file soldier. The soldier would call they name and they would be dragged up and asked a question, the prisoners would be divided up depending on the answer. About five days later, he was taken to Incheon Prison, where one of the Jeju policemen, who had accompanied them, would say, "This person gets so and so years, that person gets so and so years".

[Hyun,020]

He had come down from the mountain and was apprehended by the Military police around May 10th, 1949. He received a trial at Gwandeokjeong Pavillion with about 200–300 others, where one would have their name called, sit in front of a soldier. The soldier would ask, "What are you guilty of?" & "I will tell you your punishment by this paper." He was informed of his sentence only after he arrived at Daegu Prison.

[Oh,03]

He was Captured by soldiers during May 1949 and held in a stud factory for about a month and another 15 days at an alcohol factory. His trial was held at a big lecture hall, where a soldier would call his name and he would tell them his address. He learned that he was given a 15-year prison sentence for violating the 'National Defense and Security Law' after he arrived at Daegu Prison.

[Park,02]

He was apprehended in the spring of 1949. He was held for about 2–3 months at the agricultural school, military police station, and alcohol factory. He was taken to a yard near the police station and Gwandeokjeong Pavilion with about 100 other people, but doesn't remember the rest of the trial. After arriving at Incheon Prison, the Prison Warden would call their name and divide them into groups. Then inform them that this group of people would get 3-year, or 5-year. That is when Mr. Park learned he received a 7-year sentence.

[Yang,02]

In the winter of 1948, after the Mid-Mountainous eviction order was given and his Brother and Sister-in-law were killed, Mr. Yang came down to Hamdeok and turned himself in to the Military police. He was detained at the Dongcheok Company building and then sent to Incheon Prison. He was told about his seven-year punishment after he arrived.

[Kim,02]

In April 1949, he came down from the mountain and was arrested in Donggwangyang village, passed through the warehouse of Seomun Tong, and was held at the alcohol factory for a couple of months. Later at Gwandeokjeong Pavilion with about 50 other people, while seated they

were tried, but he heard nothing. Later, he was released from Seodaemun Prison in the spring of the following year, but the sentence or charge was never heard.

[Kim,03]

In April 1949, he came down from the mountain and was held at the Dongchuk Company. He never received a trial. He was transferred to Jeonju Prison in July 1949 and was released in May 1950.

In the process, the inmates talked to each other or asked the guard to find out that they were there for "a year in prison."

[Park,03]

In January 1949, he was captured by soldiers and taken to an agricultural school. When he was released, he was arrested again in March 1949 due to an investigation by the Jeju police. He was tried with about 50 other people standing in the police yard. A man in plain clothes spoke in the manner of "You get a few years, and you get a few years," and was told, "You're getting three years in prison because you're guilty of espionage." After going to Jeonju Prison, the following spring, he was released from prison with a special pardon.

[Jeong,01] In May 1949, he came down from the mountain and turned himself in. He was held in a potato warehouse for 20 days and an alcohol factory for another 15 days. He was tried at a court in Gwandeokjeong Pavilion.

A judge, in military attire, asked only a few questions and ended the trial.

After the trial, he was transferred to Mapo Prison, where the warden told him of his indefinite sentence.

#### Special Reference

[시행 1948. 4. 1.] [군정법령 제176호, 1948. 3. 20. 제정]

제1조 본 영은 불법구속에 대한 인민의 자유권을 충분히 보장하기 위하여 형사소송법을 개정함을 목적으로 한다.

제2조 (본 영 중)

가. 구속이라고 하는 것은 구인, 구류, 유치, 체포 또는 검속 등 어떠한 명칭이든지 신체를 구속하는 모든 경우를 말

한다.

나. ~ 라. (생략)

제3조 누구든지 구속당할 자의 성명 및 피의사건을 기재한 재판소가 발한 구속 영장 없이 신체의 구속을 받지 아니한다. 그러나 다음 사항의 1에 해당하며 또한 긴급을 요하는 경우에는 그렇지 아니하다.

1. 피의자가 일정한 주거를 갖지 않는 경우
2. 그 장소에 있고 없음을 불문하고 형사소송법 제130조에 규정한 현행범인 경우  
그러나 범행 종료 후 48시간 이내에 신체를 구속하는 경우에 한한다.
3. 현행범의 취조에 의하여 공범을 발견한 경우. 그러나 범행 종료 후 48시간 이내에 신체를 구속하는 경우에 한한다.
4. 기결의 수인 또는 법령에 의하여 구속된 자가 도망한 경우
5. 사체의 검증에 의하여 범인을 발견한 경우
6. 피의자가 죄증을 인멸할 상당한 우려가 있는 경우
7. 피의자가 도망할 상당한 우려가 있는 경우
8. 피의자가 사형, 무기 또는 장기 1년 이상의 유기의 징역, 금고에 처할 수 있는 죄를 범하였다고 믿을 만한 상당한 이유가 있는 경우

제4조 검찰관 또는 경찰관은 법령에 규정한 이외에 사형, 무기 또는 장기 1년 이상의 유기의 징역, 금고에 처할 수 있는 범죄가 현행 중 또는 착수되려는 상태에 있다고 믿을 만한 상당한 이유가 있는 경우에 한하여는 그 범죄의 방지 또는 수사에 필요한 조치를 취하기 위하여 주간 또는 야간을 불문하고 어느 때든지 영장 없이 타인의 주거 또는 건조물에 들어가 피의자를 즉시 구속하여 장품 또는 그 범죄행위에 공용되었다고 믿을 만한 상당한 이유가 있는 물건을 압수할 수 있다.

제6조 검찰관, 사법경찰관 또는 기타 관헌이 제3조 및 제4조의 규정에 의하여 구속 영장 없이 신체를 구속한 경우에는 서울시와 재판소가 있는 부, 군, 도에 있어서는 그 구속한 때부터 48시간 이내에, 재판소가 없는 부, 군, 도에 있어서는 5일 이내에 재판소로부터 구속 영장의 발부를 얻어야 한다.

전항에 규정한 기간 내에 구속 영장의 발부를 얻지 못한 경우에는 구속당한 자를 즉시 석방하여야 한다.

그 경우에는 수색 영장 없이 압수한 물건은 압수당한 본인에게 환부하여야 한다.

제2항의 규정에 의하여 석방된 자는 재판소가 발부한 구속 영장 없이 동일 범죄 사실에 의하여 재차 구속되지 아니한다.

제8조 사법경찰관이 피의자를 구속한 경우에는 실제로 구속한 날로부터 10일 이내에 취조를 완료하여 피의자를 검찰관에게 송치하지 않는 한 석방하여야 한다.

그러나 그 10일의 기간 만료 전 관할 재판소로부터 구속 기간 연장 결정을 얻은 경우에는 그렇지 아니하다.

취조의 완료에 10일을 초과하는 일수를 요할 때는 사법경찰관은 검찰관을 경유하여 이유를 갖추어 관할 재판소에 구속기간 연장 결정을 신청할 수 있다.

재판소가 필요하다고 인정하는 경우에는 10일을 초과하지 않는 한도로 구속기간 연장을 허가할 수 있다.

구속기간 연장은 1회에 한하여 하여한다.

사법경찰관은 재판소에서 결정한 구속기간 만료 전에 피의자를 검찰관에게 송치하지 않는 한 석방하여야 한다.

제9조 검찰관은 피의자를 실제로 구속 또는 사법경찰관으로부터 송치를 받은 날로부터 10일 이내에 기소하지 않는 한 석방하여야 한다.

그러나 그 기간 만료 전에 관할 재판소로부터 구속기간 연장 결정을 얻은 경우에는 그렇지 아니하다.

검찰관이 이유를 갖추어 구속기간 연장 신청을 한 때에 재판소가 필요하다고 인정하는 때는 결정으로써 10일을 초과하지 않는 기간 구속기간 연장을 허가할 수 있다.

구속기간 연장은 1회에 한하여 하여한다.

검찰관은 구속기간 만료 전에 기소하지 않는 한 피의자를 석방하여야 한다.(We confirm that we don't have an English edition of until now)