

Distribution of Competences between Investigators and Prosecutors

There are different categories of investigators across agencies. Broadly speaking, law enforcement officers belonging to the Prosecutors' Offices, special judicial police officers and national police.

First is the law enforcement officers working for the Prosecutors' Office. In Korea, not only prosecutors but also law enforcement officers work at each Prosecutors' Office. Although final determination shall be made by a prosecutor, prosecutors and law enforcement officers work in the same office are more in the cooperative relationship endeavoring together to discover substantial truth.

Next is the special judicial police officers. The responsibilities of the special judicial police officers are limited to the specific scope related to their work. The special judicial police officers shall perform any and all investigations under the direction of a prosecutor. On top of that, the special judicial police officers shall transfer all cases investigated to a prosecutor, and the prosecutor shall review the cases and determine whether to prosecute the cases.

Last is the most famous type of investigators in Korea, the national police. The Korean national police had long been obligated by laws to perform any and all investigations under the direction of a prosecutor. As currently required by the special judicial police officers, the national police had had to transfer all cases investigated to a prosecutor and the prosecutor had made the final decision after reviewing the cases. Nonetheless, a substantial shift was made in 2020 in the respective roles and responsibilities of the prosecutors and the national police officers. As a result, any police officer may transfer a case to a prosecutor only if the officer determines that the suspension of the offense in the case is sufficient for public prosecution. However, as one of the initial purposes of establishment of the Prosecutors' Office was to check and prevent the violation of human rights by the national police, prosecutors are still authorized to demand the police officers for further investigation, correction measures and reinvestigation in order to uphold justice and protect the human rights.

In addition, the Prosecutors' Office Act and the Criminal Procedure Act were amended to allow the prosecutors to commence investigations of only certain crimes specifically set forth in the regulations, and take the investigative authority from the prosecutors for all other crimes, making the national police the only law enforcement agency which may investigate them. Moreover, the new Act which is scheduled to go into effect on September 10, 2022 precludes the prosecutors from commencing investigations into crimes involving public officers, related to election, and occurred in the defense industries.