

# Reasons for Excessive Delegation related to the Social Security Acts and its Effects on Social Policy in Korea\*

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## ◀ Abstract ▶

The Korean Assembly delegates authority to the governmental administration to regulate the most important components of social security programs. The excessive delegation is a rational choice on the side of Korean representatives whose ultimate goal is to be nominated again and elected at the next general election. As Korean political parties adopt top-down methods to nominate a candidate and loyalty to the party leader is the pre-eminent criterion of candidate selection, representatives are not concerned about regulating the Social Security Acts in detail. In addition, the members of the standing committees of the Assembly must be reorganized every two years and their members often change committee. As a result, representatives delegate authority to the administration to regulate the aforementioned important components of social security

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programs. It leads to fail to develop social security programs.

Key word: social security act, social policy of South Korea, delegated legislation, candidature nomination system, standing committee

## 1. Introduction

Since the mid-1990s, studies have increased about the social policies of East Asian countries such as South Korea, Japan, Hong Kong, Singapore, and Taiwan, where economic growth is high but social security expenditure is low. Researchers have mostly focused on two subjects. One is to analyze why social security programs were introduced in these countries. Studies found that background reasons included the legitimation of the authoritarian regime (Kwon, 1999), nation-building after the Second World War (Goodman/Peng, 1996), and as an instrument for economic development (Deyo 1992; Hollidays 2000). The other is the classification of the welfare state, where South Korea is classified as a Confucian welfare state (Jones 1993; Rieger/Leibfried, 1999), a developmental welfare state (White/Goodman/Kwon, 1998), and as productivist welfare capitalism (Hollidays, 2000). Although the results are diverse, there is agreement across studies. It is that social policy in South Korea, as well as in other East Asian countries, has been strongly influenced by governmental administration or technocrats (Deyo, 1992; Hollidays, 2000: 707, 715; White/Goodman/Kwon, 1998: 213; Jones, 1993: 204; Goodman/ Peng, 1996: 196).

Some researchers (Kwon, 1999; Jung 1993; Shin, 2000) analyze how the administration has affected social policy in Korea. Yet it remains necessary to study how social policy has continued to be influenced by the administration, not by the Assembly, as the administration retains a strong influence in this area. Its impact seems stronger than that of the Assembly, even though South Korea was democratized in 1987. The National Assembly of the Republic of Korea (henceforth referred to as the Assembly) seems reluctant to regulate this area, while the administration remains eager to continue its strong influence on the social

policies of the country. Therefore, the questions of this study are: is the Assembly still forced to be reluctant in the state policy area by the administration as under the authoritarian period; or does the Assembly voluntarily give up its authority, even when there are no obstacles to its actualization; and how does the administration maintain its strong influence on social policy in this democratic regime?

To answer the questions above, I will first analyze the Social Security Acts of Korea, because they demonstrate the power relationship between the Assembly and the administration in the field of social policy. The Assembly legislates the Social Security Acts which are the legal basis of social security programs which the administration creates and enforces.

The analysis of the structure of the Social Security Acts will demonstrate to what extent the Assembly wants to regulate social security programs and delegate regulating power to the administration. The more the Assembly regulates the Acts concretely, the less the administration has a delegated power to control social policy programs. In contrast, the more the Assembly regulates the Acts loosely, the more the administration has a delegated power. Furthermore, the analysis of the Acts offers an opportunity to anticipate how actively welfare politics are discussed in the Assembly. The more a legislative assembly regulates Social Security Acts concretely, the more democratic debate about welfare takes place in the political forum, because parties compete to pull in voters with their social policies. As a result, politicking regarding welfare is activated. Due to these reasons, the Social Security Acts are to be analyzed first.

Second, the candidate-nomination system of the political parties and the standing committees of the Assembly are dealt with in this study, as they are directly related with the conduct of elected representatives in regulating Social Security Acts. The question is how do they regulate them, if the candidate-nomination system is of a top-down selection type and the members of standing committees of the Assembly are often changed?

Finally, the outcome of the strong influence of the administration and the weak influence of the Assembly on social policy will also be analyzed.

## 2. The Structure of the Social Security Acts in Korea

The Korean Social Security Acts are composed of the Social Insurance Acts, the Public Assistance Acts, and the Social Service Acts. In this section, the articles of the Social Security Acts related to the coverage of beneficiaries, the eligibility for benefits, the level and scope of benefits and insurance premiums are analyzed, as they remain the most important components of the Acts strongly influencing the life of citizens of Korea.

### 1) Coverage of Beneficiaries

The coverage of beneficiaries of all social security programs in Korea has been decided not by law, but by Presidential Decree. The Social Security Acts have delegated their authority to Presidential Decrees or Ministerial Ordinances to determine coverage of beneficiaries. Through them, the coverage of beneficiaries of the social insurances could be expanded in a short time. For example, the National Health Insurance covered about 97% of people in 1989, although it was introduced as a compulsory social insurance in 1977.<sup>6)</sup> It took 12 years for almost universal coverage. We can see a similar tendency in other social insurances, like the National Pension Insurance, and the Industrial Accident Insurance among others.

There are, though, still some employees and people who are excluded from social security programs. Industrial Accident Insurance and Employment Insurance do not cover employees who work in small businesses of agriculture, fishery and construction or within households, and employees on contract whose working hours per month are less than sixty. 17% and 40% of employees were excluded from Industrial Accident Insurance and Employment Insurance respectively, in 2010 (Ministry of Employment and Labor, 2011a:

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<sup>6)</sup> In fact the National Health Insurance was introduced in 1964, but it was a voluntary social insurance. Therefore its role in managing health problems was marginal. For a long time, the Ministry of Health and Social Affairs (former Ministry of Health and Welfare) tried to make it a compulsory social insurance (Lee, 2007: pp.84-86).

67; 2011b: 23). This exclusion is regulated by Presidential Decree, not by laws. The same regulation type is found in Social Service Acts and Public Assistant Acts. The Presidential Decree and Ministerial Ordinance of the National Minimum Living Standard Security Act determines who can receive its benefits, as the Act delegates power to the Ministry of Health and Welfare to test the means of the applicant and to measure the minimum cost of living which is one criteria to decide its beneficiaries. Beneficiaries of the Pension for the Disabled and the Basic Pension for the Aged, and the childcare benefit of the Infant Car Act are decided on the basis of Presidential Decree or Ministerial Ordinance by the administration.

Under this particular circumstance the Korean administration can control the coverage of beneficiaries. Thus an applicant cannot anticipate whether he can receive a benefit solely on the wording of the Act. He needs to see the decrees of the administration to know that. As a result, the realization of certain social rights depends on the decision of the administration. This is not in accordance with the Constitution of the Republic of Korea (henceforth referred to as the Constitution) which allows the Assembly to regulate basic rights including social rights.

## 2) Eligibility for Benefits

All applicants cannot claim benefits from social security programs, even if they are included in the programs. First of all, they have to be eligible for benefits. In this case, applicants are affected by whom or what regulates the eligibility for benefits. If it is regulated by law, their right for benefits can not be easily changed because politicians should consider applicants as voter. They can plan their own life on the basis of the benefits. On the contrary, applicants have no reasonable expectations when benefits are regulated by administration regulations, because the conditions for benefits can be changed someday. It can lead to suddenly loose their eligibility. Under most Korean social security programs, the eligibility for benefits is

regulated by Presidential Decree or Ministerial Ordinance.

There are two methods to regulate the eligibility for benefits. The first way is that some parts of it are regulated by law. The Industrial Accident Insurance Act compensates workers for their work-related accidents. The accidents should be related to work in order that an injury, a disability a disease or a death can be compensated. The Act describes the criteria for eligibility in abstract, while the concrete criteria for recognizing work-related accidents are prescribed by its Presidential Decree. In general, the Korean Employment Insurance Act does not grant unemployment benefits to the unemployed who leave jobs of their own volition. Yet the Act delegates authority to the Ordinance of the Ministry of Employment and Labor to determine which specific cases are not out of work by themselves but through exceptional circumstances, even if they voluntarily left employment. The effect of its Ordinance is crucial, because about 59% of the unemployed in Korea are separated from employment by themselves in March 2012 (Ministry of Employment and Labor, 2012).

The second type is that the eligibility for benefits is not regulated by law, but mostly by Presidential Decree or Ministerial Ordinance. The eligibility for benefits of the Long Term Care Insurance Act is prescribed by Presidential Decree and the Ordinance of the Ministry of Health and Welfare, which set forth the criteria for assessing the category and degree of need for long-term care. The category of income and means testing of applicants for benefits under the National Minimum Living Standard Security Program and the Pension for the Disabled are overly controlled by the administration. In the Social Service Acts, the delegated power from the Assembly to the administration is more than in other areas. There are many discretionary benefits granted by the administration.

It means that the administration actively keeps control over the number of beneficiaries of social security programs. In this way, the administration manages beneficiaries within a prescribed budget. The result is that the more it has the right to enact Presidential Decrees and Ministerial Ordinances, a power which the Assembly delegates to the administration, the more social rights are unstable and unpredictable.

### 3) Scope and Level of Benefits

There are two ways to regulate the scope and level of benefits under the Korean Social Security Acts. One way is that it is regulated partially by the law, Presidential Decree or Ministerial Ordinance. The other method is that it is regulated completely by Presidential Decree or Ministerial Ordinance. The Employment Insurance Act and the National Pension Act belong to the first category. The National Health Insurance Act, the Industrial Accident Insurance Act, the Act on Long-Term Care Insurance for Senior Citizens and the Act on Pensions for the Disabled belong to the second type.

The job-seeking benefit of Employment Insurance is to stabilize the livelihood of the unemployed and his or her family. Article 46 (1) of the Employment Insurance Act regulates that its daily amount is calculated by multiplying the basic daily wages of the eligible recipient concerned by 50/100. The daily amount cannot exceed the amount prescribed by Presidential Decree. As Employment Insurance was introduced in 1995, its maximum daily amount was 35,000 won. In 2012 it is 40,000 won<sup>7)</sup>. For seventeen years it has increased only a little, despite consumer prices increasing by 3.6% every year. As a result, the level of the job-seeking benefit is decided by Presidential Decree, not by the Assembly. Similar regulation is found in terms of the benefits of the National Pension Act which is calculated on the basis of a basic pension amount and a dependent pension amount. The basic pension amount is calculated by the sum of the monthly income before the first year of payment of pension benefits. Thus the calculation method to convert the last monthly income into its current value influences the basic pension amount. Article 51 (2) of the National Pension Act delegates the right to decide this calculation to Presidential Decree. It means that a pensioner is dependent on the decision of the administration for his/her standard of living.

The method of regulating the scope and level of benefits of the National Health Insurance Act, the Industrial Accident Insurance Act, the Act on Long-Term Care

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<sup>7)</sup> 1 United States dollar is 1,133 won on 22 March 2012.

Insurance for Senior Citizens and the Act on Pension for the Disabled seems more critical. The Acts mention mostly the items of benefits such as medical examinations and tests, treatment, operations, rehabilitation, hospitalization, nursing, patient care, and transfers, among others. Then the Acts delegate power to the administration to prescribe the criteria for the calculation of benefits, such as the scope and amount of medical care benefits. The minimum cost of living of the National Minimum Living Standard Security Act is the minimum amount of expenses required for people to have a healthy and civilized life. Therefore it is important who decides it and how it is to be measured. In Korea, its authority is delegated to the Ministry of Health and Welfare.

The scope and level of benefits of social security programs is closely related with the realization of a life worthy of human beings, which Article 34 (1) of the Constitution proclaims as the right of all citizens. In the democratic constitution, the Assembly is the first state organization which has the duty to realize this right. Laws are its means to achieve the goal. Therefore, the Assembly should independently and concretely shape the Social Security Acts to realize social rights. The Assembly does not do its duty in the legislative area of social security.

#### 4) Insurance Premiums

The social insurances such as the National Pension, National Health Insurance, the Industrial Accident Insurance and Employment Insurance are run on the basis of premiums of policyholders. Policyholders of the National Health Insurance and the National Pension are divided into employment-provided policyholders and locally-provided policyholders. The insurance premiums of the former are borne, fifty hundredths each, by the policyholders and the employer, while the latter pays their insurance premiums alone.

Each premium of employment-provided policyholders is computed by each person's own remuneration and the insurance premium rate. Thus the range of remuneration and

the rate of premiums are essential elements to determine each person's own insurance premium. The premium rate of the National Pension is regulated by its Act. That of other insurances, such as the Industrial Accident Insurance, Long-Term Care Insurance for Senior Citizens, and National Health Insurance, is not directly prescribed by the Acts, but via delegated legislation by the administration. The range of remuneration of employment-provided policyholders is also under the control of the administration except that of Industrial Accident and Employment Insurance.

Once again, this means that the administration can affect, on the basis of delegated legislation, the premiums of policyholders. For example, the calculation of premiums of locally-provided policyholders under the National Health Insurance is more complicated than that of employment-provided policyholders, because income, property, living standards, the value of one's car, the size of one's family, age, etc., are taken into account by the administration. This is crucial information in determining the insurance premiums of locally-provided policyholders. The Ministry of Health and Welfare has exercised the right to decide these matters on the basis of the delegation of the Assembly. It can increase premiums by extending the range of income, without raising the premium rate. The problem is that policyholders do not know why, how and when their premiums have been raised, because the administration can decide the range of remuneration or a calculation method through their discretionary right granted via the delegation of power.

The right of property is guaranteed by the Korean Constitution. Before the state restricts the definition in any way, it needs the agreement of the Assembly. Insurance premiums are very closely related with the right of property, because policyholders pay premiums from their own property. Hence the regulations about premiums should be under the Assembly to protect the rights of policyholders.

### 3. Reasons for Structural Problems

#### 1) The Legacy of the Authoritarian Regime

In the history of social policy-making in Korea, the period of the authoritarian regime from 1961 to 1987 is particularly meaningful, as some important Social Security Acts were enacted during this timeframe. In 1961 the Livelihood Protection Act was enacted which was substituted with a new one in 1997. In 1963 the Industrial Accident Insurance Act and the Health Insurance Act were enacted. At that same time, Health Insurance was introduced as a voluntary insurance. In 1977, it became compulsory. In 1986 the National Pension Act was enacted. It originated in the National Welfare Pension Act enacted in 1973, but was not implemented due to the Oil Crisis. Under the authoritarian regime, other social service Acts such as the Child Welfare Act in 1961, the Act on Welfare of the Aged in 1981, and the Act on Welfare of the Disabled in 1981 were also enacted.

The structure of the Social Security Acts in the authoritarian regime is similar to that in the democratic regime. At that time the essential parts of the programs such as insurance premiums, the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries were also controlled by the administration just as in the democratic regime. The Assembly delegated the authority to the administration to control the Acts, regulating them loosely. The programs were concretely shaped by Presidential Decree and Ministerial Ordinance. This tendency has continued in the democratic regime. The role of the administration is to enforce law, not to enact it. If the administration can freely shape programs on the basis of delegated authority from the Assembly, it is functioning legislatively. Thus the administration in the authoritarian regime played the role of a real Assembly. In spite of democratization in 1987, the role of the administration has changed little. As analyzed above, the important parts of the social security program are still controlled by the administration.

It was a foregone conclusion that the administration in the authoritarian regime had

strong and far-reaching powers to control state policy, including social policy. At that time, the administration was enlarged through many administration reforms. In only a short period from 1961 to 1963, there were twelve instances of administrative reforms (Lee, 2007b: 118). It resulted in the increase of the ministries and offices and the numbers of bureaucrats. On the basis of these reforms, the influence of the administration on state policy increased more and more. In conjunction, under the authoritarian regime, the role of the Assembly to decide state policy was reduced. In 1961 the Assembly was even dissolved by the military junta. After it re-opened, the session of the Assembly was limited to 150 days in a year (Lee, 2009: 35). In addition, the President had the power to dissolve the Assembly at will. Therefore, under the authoritarian regime, the role of the Assembly was to pass the bills the administration submitted. Of course, the delegation of authority to the administration was written within the bills. The bills of the Industrial Accident Insurance Act, the Health Insurance Act and the National Pension Act among others were all suggested by the administration. They were passed without almost any modification.

The status of the Assembly has improved since democratization in 1987. The President can dissolve it no more and its session is not limited in a year. Nonetheless, the Assembly still continues to delegate authority to the administration to control important parts of social security programs. It seems that the practice of the authoritarian regime has remained and affected the Assembly. But this practice is not in accord with the principles of democracy, legal reservation and the separation of powers.

## 2) Candidature Nomination System of Political Parties

The legacy of the authoritarian regime is not the only cause to affect the structure of the Social Security Acts. Some political institutions can also influence it if they motivate representatives to regulate the Acts loosely. The candidate-nomination system by political parties is one such political institution to have influence on the structure of the Social Security

Acts. When a candidate is nominated by members of parties or by voters, the politicians who want to be re-elected, will try to regulate or reform social policies concretely so that they may have the continued support of backers. Under such bottom-up methods, the politicians should react to the interests of their party members or voters to be re-nominated and re-elected. The concrete regulation over social security acts is one of their reactions to the interests of voters or their party members. The more concretely they regulate social security acts, the more strongly they can appeal to their party members or voters that they represent the interests of voters of their party members. It help their re-nomination or re-election. The more representatives regulate social security programs by themselves, the more they have incentives to pull in supporters. Then Social Security Acts are concretely regulated by legislative bodies, as other representatives are similarly motivated.

In Germany a candidate for the federal assemblymen is nominated through the bottom-up methods. A candidate must be nominated by the secret vote of the party members who take part in the local party convention. Thus the politicians should be active in parliamentary politics to represent the interests of the local party members. Social policy is, needless to say, one of their interests. German Social Security Acts are concretely regulated by politicians.

Contrarily, elected representatives do not show an interest in regulating acts concretely when the nomination system does not give a motivation. When only the central headquarters of the party has the power to decide candidates and the criteria of candidature are not related to policy competence or approval from voters or party members, but to loyalty to the dominant faction or the leader of their party, political representatives seeking further nomination do not spend time regulating Social Security Acts concretely. Under such top-down methods, they do not have motivation to concretely regulate social security acts to be re-nominated or re-elected, as it offers no political clout. In this case it seems not reasonable for them to do that as their ultimate goal is to find a way to be re-nominated. In this situation, social security measures are loosely regulated by elected bodies.<sup>8)</sup> Korea is one such

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<sup>8)</sup> This point of view overlooks such politicians who act up to their belief and devote much of their political life to making

case.

In Korea the top-down methods have been used to nominate a candidate by political parties. Recently, the nomination process has been led by a judging committee for candidate nomination. Central headquarters of all parties have continuously exercised their influence by designating the members of the judging committee for candidate nomination. The critical point is that the most powerful faction of the party, influenced by a powerful leader, dominates the candidate-nomination process and the most important criterion of the nomination is not policy competence, but if an applicant is a member of the faction or not.

An example shows how unfair and undemocratic the top-down methods to nominate a candidate are (Do, 2011: 245). Some applicants of the biggest opposition party found it impossible to be selected as a candidate for the representatives' election in 2008, because they belonged to a minority faction. They then left the party and organized a new party before the election and many of them were elected. Although the possibility of election of an applicant may be high, he cannot be nominated if he does not belong to the dominant faction. Loyalty to the dominant faction is the most important criterion to be nominated. Approval from voters or party members, or the policy competence of an applicant is not considered if he does not belong to the party elite. We can see the same situation both in the ruling party and opposition parties.

Such exclusive methods of candidate-nomination are closely related with the structural problems of the Social Security Acts in Korea. The most important criterion of these undemocratic top-down methods to nominate a candidate is based not on approval from voters or party members or policy competence to regulate the Acts concretely, but on loyalty to the powerful leader or particular party faction. Therefore, representatives have no interest in spending time on regulating the Acts in detail. This leads Assembly representatives to delegate authority to administrative counterparts to regulate important components of the

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state policy or regulating Social Security Acts in detail. But the political career of such politicians would not be guaranteed under the top-down methods of nominating a candidate in Korea, if they do not show loyalty to the dominant faction or the leader of their party.

Social Security Acts such as insurance premiums, the scope and level of benefits, eligibility for benefits and coverage of beneficiaries. In contrast, if a candidate is nominated through democratic bottom-up methods, representatives do not delegate power to administrative sections but assume the authority to control legislation and its application. Under those auspices, elected representatives would be eager to regulate laws themselves, because they are likely to use the Social Security Acts as political leverage to appeal to voter or party support. Hence, the change of the structure of the Social Security Acts seems to be difficult without changing the candidate-nomination system in Korea.

The Korean top-down methods to nominate a candidate has a historical background. In Korea, the first candidate-nomination system by political parties was introduced at the third election of representatives in May 1954. At the beginning of the process for the ruling party, bottom-up selection methods were used with a points system. Forty points were allocated to the local delegate, twenty to provincial headquarters and forty to central party headquarters (Kim, 2010: 788). These bottom-up selection methods failed, though, to achieve the goal of selecting a candidate fairly and democratically. At the final step of the candidate-nomination process, the leader of the party, who was also the President, arbitrarily exercised his power to select candidates. Applicants who had gained the highest points were left out of the nomination by the President. He wanted to select candidates who could unequivocally support him in extending his position as President. In addition, he exercised his power on the candidate-nomination process to eliminate political rivals and representatives who would not swear loyalty to him, yet wanted to be re-elected (Park, 2008: 126). If an applicant wanted to be selected as a candidate, it was necessary for him to take an oath to support the extension of the President's position (Kim, 2010: 788). As a result, the first candidate-nomination system by the party became an instrument of the party leader, who was also the President, to achieve his political goals (Park, 2008: 126). Since then, the candidate-nomination system by the party has been used as a tool to fulfill the purpose of the party leader.

The proportional representation system was introduced under the military junta in

1963, ostensibly to improve the expertise of the Assembly. Yet, it was also used to enlarge the influence of the party leader on candidate nominations. It was misused as a path to turn military men into politicians and to fundraise by selling nominations to those proportional representation seats (Park, 2008: 127). Consequently, the introduction of proportional representation resulted in reinforcing top-down selection methods which were dominated by the party leader in the ruling party as well as in opposition parties (Kim, 2010: 789). Furthermore, the power of the President, also the leader of the ruling party, to control the candidate-nomination system was strengthened through the enactment of the Yu-Shin Constitution in 1972, which gave the President the right to nominate a third of the total number of representatives. During the authoritarian regime, the influence of the President was predominant within the candidate-nomination system. The leaders of the opposition parties also exercised enormous power when deciding upon a candidate. Under these circumstances, the most important criterion to be nominated as a candidate was loyalty to the party leader, not policy competence such as the concrete regulation of the Social Security Acts.

In spite of the democratization of 1987, the top-down methods to nominate a candidate were continuously used in the ruling party and the opposition parties. In addition, the influence of top-down methods increased according to the emergence of regionally-based parties arising from the distinct political and cultural entities of the south-east, south-west and middle areas. There is a preferred party in each region. If an applicant was nominated as a candidate of the preferred regional party, he could become a representative without difficulty. The top-down selection methods and the emergence of regional parties led to an increase of the influence of the party leader. His power to nominate in the region where his party is preferred was decisive for those wanting to be elected. Consequently and despite democratization, the candidate-nomination system remained undemocratic. This system prevented representatives, who wanted to be nominated again, from developing policies including social policy, primarily because policy competence was not an important criterion of the nomination.

At last in 1997, voters and members of the ruling party gained a chance to take part in the candidate-nomination process, as the ruling party introduced a competitive system to nominate a candidate for the presidential election. In 2002, bottom-up selection methods were also, in part, introduced at the presidential election by the biggest opposition party. By 2004, most parties adopted bottom-up selection methods at the Assembly elections, more so than before.

In spite of such a positive change, the central headquarters of the parties continue to dominate the candidate-nomination process and the nomination results (Jeon, 2010: 52; Kim, 2010: 790). If a party leader or a dominant faction has power in the party, his or its ultimate goal is to continually retain it. Both prefer exclusive top-down methods to nominate a candidate, because they can select those who pledge their loyalty. The relationship becomes one of patron-client. Such top-down selection methods are preferable to the elite because of a party's exclusive regional support (Gil, 2011: 305). Such methods are not always disadvantageous for a representative who wants to be nominated again, or an applicant who wants to be nominated. If he is nominated, his possibility of election is very high, because he can be absolutely backed in the region. Therefore, the first goal of a representative or an applicant is to win the trust of the party leader or the dominant faction, not to develop policies.

### 3) Standing Committees of the Assembly

Since the first Constitution of South Korea was enacted in 1948, it proclaimed South Korea a democratic state. It means that state power comes from and belongs to the people. In other words, the Assembly, as the representative organization of the people, is the most important state organization to decide any policy related to the life of citizens. The Assembly, though, has not exercised this power since the nation-building of 1948, because true authority had been retrenched for a long time under the authoritarian regime. Thus state policy was

decided by the President or the administration. Above all, the standing committees of the Assembly assisted and complied with the administration, passing bills the administration drafted (Park, 1997: 333). It is because of this particular situation that important components of the Social Security Acts have been controlled not by the Assembly, but by the administration.

The way of managing standing committees has also been an obstacle to the Assembly developing their competence or expertise. The term of office of standing committee members was originally capped at four years according to the Parliament Act enacted by the Assembly in October 1948. The term was the same as that of elected representatives thus ensuring important continuity. In this situation, a representative had to choose only one committee. Thus, activities of the representative in a committee were guaranteed for four years in the first Assembly. The representative had an opportunity to develop his policy expertise, if he had interests in that field. This chance was quickly removed through the amended Parliament Act of January 1953. It was believed, among representatives, that members of a committee could carry out important decisions with a term of office secured at four years (Seo, 2010: 63). Consequently, the President and his administration wanted to incapacitate the Assembly (Park, 1997: 333). Their machinations led to a shorter term of office of one year. Therefore, committee members had to be newly-organized annually. In this situation, it was not easy to develop policy competence.

The term of office of standing committee members increased to two years under the military junta, which came to power through the military coup of May 15, 1961. Furthermore, standing committees had the potential to play a major role to make or amend laws after the amendment of the Parliament Act in 1963. The purpose of this reform, though, was to make standing committees more efficient rather than to strengthen the Assembly, because the military junta regarded it as inefficient to constantly re-organize committee members yearly (Kim, 2002: 37). Standing committees in this situation played a major role in passing bills drafted by the administration.

Since then, the term of office of the standing committee member has been two years

which means that committee members must be newly organized every two years, despite the term of office of the representative being four years. Of course, a representative can freely change his committee during the term of office. Although some committee members have stayed in a committee for four years, half of the elected politicians changed committee during their respective terms (Lee, 2009: 159). Even many committee chairpersons have changed during their terms. In the seventeenth period (2004-2008) of the National Assembly, all committee chairpersons and 64% of committee members had changed their committee (Lee, 2009a: 159). There are preferred committees and undesirable ones among representatives. For example, the Legislation and Judiciary Committee and the Environment and Labor Committee are unpopular. Therefore, the transfer rate of members is very high. In contrast, the Land, Transport, Maritime Affairs Committee and the Strategy and Finance Committee are the most preferred. Here transfers are relatively low, compared to the aforementioned.

There are various reasons to change committee. Ones such as the Land, Transport, Maritime Affairs Committee and the Strategy and Finance Committee are helpful as they increase the representatives' political power within the party, and help realize the interests of their own local constituency as well as further an individual's own re-election plans. For this reason, most representatives want to take part in useful committees. Also, if some representatives stay in those committees during their complete term of office, conflict is inevitable. Thus, the rule to newly organize committee members every two years has been institutionalized to avoid such conflicts (Park, 1997: 334). There is another reason why representatives change their committee. In Korea, the most important criterion to be re-nominated is not policy competence which can be accumulated through long-term committee membership, but through belonging to a major faction. Because of this, representatives are not motivated to stay in a committee for a long time. Thus, it is reasonable for them to change committee frequently. In addition, they can have more chances to interact with powerful colleagues by changing committees many times.

The change rate of committees is also high among representatives who have been

re-elected. 62% of those re-elected from the twelfth to the sixteenth period (1984-2004) of the Assembly, changed their committee (Park, 2004: 99). Such conduct of representatives does not contribute to develop their policy competence. Coupled with the high rate of new representatives, policy competence is difficult to develop or advance. About 43% of all representatives from the fifteenth to the eighteenth period (1997-2012) of the Assembly were newcomers (Seo, 2010: 64).

The inevitable movement of committee member leads invariably to a negative influence on the development of policy competence. The more frequently representatives change their own committee, the more they lose opportunities to accumulate policy competence. Thus, the high rate of change among committee members in Korea has relevance to the structural problems of the Social Security Acts. Because of the lack of competence caused by several changes of committee personnel, representatives cannot regulate Social Security Acts concretely. Therefore, they need to delegate to the administration the authority to regulate them concretely. Changing committees many times leads to lack of policy competence. Above all, the rule to re-organize standing committee members every two years contributes to this lack and needs to be abolished to develop policy competence among elected officials.

#### 4) Opinion of the Judicature

The opinion of the judicature in Korea is also an obstacle in changing the structure of the Social Security Acts. It regards it as correspondent to the Constitution that the Assembly delegates authority to the administration to concretely regulate the important components of social security programs such as insurance premiums, the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries. It insists that the conditions of delegating power from the Assembly to the administration can differ according to the object and sort of regulation. For example, if a policy is related to the right of freedom or the right

of property, the judicature considers it to be concretely regulated by the Assembly. It thinks that such a policy can or should be protected better by the Assembly than by the administration. In fact, the judicature has decided, on cases related to the freedom to choose an occupation and the television-watching fee, that the Assembly must not delegate the regulating authority to the administration, even if the amount of the fee is small. Its statement is based on the Constitution which proclaims the right of freedom and the right of property as basic rights.

In contrast, the judicature sees that the delegation conditions of the Social Security Acts are not as strict. Therefore, it is permitted that the Assembly can delegate authority to the administration to regulate important components of social security programs. The judicature thinks that the right of freedom and the right of property are different from social rights. It argues that the administration had better regulate such policies which vary on occasion or are complicated. It regards the Social Security Acts as such an area. From a conservative view, the judicature has rejected the opinion that the excessive delegation of the Social Security Acts does not correspond with the Constitution.

The grounds of the judicative view, though, are not acceptable. Presidential Decrees and Ministerial Ordinances to regulate insurance premiums, the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries have been amended little during the last years. Thus, although they are directly regulated by the Assembly, assuming authority over Social Security Acts would not be burdensome for the Assembly. In addition, they are not so complicated that the Assembly could not regulate them. The Assembly needs no particular mathematical ability, but instead the skill to negotiate effective political change to administer Social Security Acts.

The judicature even contradicts itself. It insists that the right of freedom or the right of property must be concretely regulated by the Assembly more so than with social rights. The Constitution, meanwhile, proclaims not only the right of freedom but also social rights as the basic rights of citizens. It means that the Assembly must concretely regulate not only the right of freedom but also these social rights. The Social Security Acts are one of the most

important instruments to realize social rights. Therefore, they should be concretely regulated by the Assembly.

There are some reasons for the conservative view of the judiciary. As previously mentioned, Korea was under an authoritarian regime from 1961 to 1987. Thus, some authoritarian legacies still remain. The excessive delegation of authority over the Social Security Acts to the administration is one such inheritance. The judiciary keeps the old attitude alive. As Korean democracy matures, the view of the judiciary could change. Underdeveloped social welfare in Korea contributes to the conservative view. The historical period of social security development in Korea is shorter than that of the right of freedom and the right of property. Therefore, the influence of social security programs on the life of the Korean people is not so extensive to currently change the view of the judiciary. As public knowledge and use of social services increase, the judiciary is likely to reflect the experiences of a changing society.

#### 4. Effects of Excessive Delegation

.What is the influence of the excessive delegation of the Social Security Acts to the administration on the development of social security? There are both positive and negative assessments. That the administration has the delegated authority to control social security programs has permitted them to develop rapidly, albeit with limitations, as the administration need not wait for a decision of the Assembly. In fact, beneficiaries' coverage under Korea's social insurances was extended by Presidential Decree very quickly. For example, Health Insurance was able to cover 97% of the people in twelve years.<sup>9)</sup> The administration extended coverage on the basis of Presidential Decree to which the Assembly had delegated all authority. Now, the National Pension Insurance and Health Insurance cover the people and the Industrial Accident Insurance and Employment Insurance cover all enterprises

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<sup>9)</sup> Another 3% of the people belong to a public health service program which covers low-income groups.

which employ more than one worker. Furthermore, the administration was able to restrain the expansion of social expenditure, thus controlling the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries on the basis of this delegated authority. As a result, most social security programs are managed without financial crisis.

But the positive effects of the delegated authority of the administration are limited, because despite the power, the administration lacks the ability to help social security programs to mature. Although the delegation of authority is effective for the quick extension of programs, it rather negatively affects their quality development. As an example, the administration cannot extend coverage any more despite the number of excluded people from the social insurances. In fact, although people can be insured under the social insurances by Presidential Decree, there are many low-income groups who cannot afford the insurance premiums. Their number amounts to more than four million. They are technically insured, but do not receive benefits, because premiums remain unpaid. This is one dilemma for the administration which cannot be solved by Presidential Decree or Ministerial Ordinance.

Korea is well-known as a country whose social expenditure is low in comparison to its economic growth. In 2011, Korea's GDP (Gross Domestic Product) ranked fifteenth in the world. Its social expenditure, though, is the second lowest among the countries of the Organization for Economic Cooperation and Development (OECD). In 2007, its social expenditure amounted to 7.6% of the GDP, while the average of OECD countries was 19.2% (OECD, 2012). This situation of low social expenditure has continued since the authoritarian regime under which it did not even reach 1% of the GDP (Lee, 2007a: 23). One reason for that is the excessive delegation of authority to the administration to control social security programs. The administration can inhibit the growth of social expenditures, controlling them on the basis of Presidential Decree or Ministerial Ordinance. For example, only about 1.5 million people are beneficiaries of the National Minimum Living Standard Security Program, while over four million live under the poverty line, according to 2009 statistics. The number of beneficiaries has changed little in the last ten years. The administration has the authority to determine the eligibility for benefits such as the minimum cost

of living and the means testing category on the basis of the Ordinance of the Ministry of Health and Welfare. Although 97% of people are insured under Health Insurance, insured patients still have to pay on average about 38% of the total medical expenses on their own. The scope and level of benefits of Health Insurance depends on the Ordinance of the Ministry of Health and Welfare. Besides, the rate of individual copayment, where a person who receives medical care benefits is to personally defray part costs, is determined by Presidential Decree. There is no sickness allowance under Health Insurance which is also regulated by Presidential Decree. The maximum amount of unemployment benefit is also controlled by Presidential Decree. It has increased little since its introduction in 1995, while consumer prices have risen every year. The situation of Long-Term Care Insurance for Senior Citizens is no different from that of other social security programs. The eligibility for benefits is decided by the Ordinance of the Ministry of Health and Welfare. The size of the beneficiaries seems to be fixed according to the budget of the Long-Term Care Insurance Act, because those who are in a worse state of health in a previous year are excluded in the current year. As shown in these cases, the important components of social security programs are regulated by the administration whose authority comes from the delegation of power by the Assembly. Thus, excessive delegation of authority leads to obstacles in the way of the development and maturation of social policy in Korea.

It is not to be also overlooked that the financial departments of the government have powerfully affected state policies since the authoritarian period and have not shown a friendly attitude toward social policy. Their negative tendency to the social policy has not been changed after the democratization. The excessive delegation of authority to the administration has been used one of their instruments to penetrate their negative influence on the social policy in the democratic regime. For example, the Ministry of Planning and Budget could control the enacting process of the Presidential Decree of the National Minimum Living Standard Security Act so that the eligibility for its program became strictly (Kim/Kwon, 2008: pp.226-250).

The excessive delegation of authority from the Assembly to the administration hinders

not only the expansion of social expenditures but also the activation of welfare politics. There is a close affinity between democracy and the development of a welfare state, because social policy can be used in a democratic regime as a policy tool to win voters over to a political party (Schmidt, 2004: 44ff). Political parties compete to gain voters by developing social security programs. Thus, the political process in democratic regimes results in the development of the welfare state (Luhmann, 1981: 27; Korpi/Palme, 2003: 428). However, such a positive relationship between democracy and social policy is weak in Korea because of the excessive delegation of the Social Security Acts. In fact, the Assembly almost does not need to regulate social security programs, because it has delegated authority to the administration to control them. Under this circumstance, it is very difficult to activate welfare politics in the Assembly. Therefore, the Korean welfare state has few chances to be developed through political engagement. On the other hand, although the administration can regulate social security programs on the basis of the delegated authority, it does not have the financial resources to develop their quality. The Assembly is responsible, in principle, for increasing taxes, not the administration. The Ministry of Health and Welfare sometimes advertises various social insurances on television programs to gain support from the people but as an approach, it fails to increase the financial resources needed to develop social security programs. As a result, excessive delegation of authority over social security programs is one vitally important reason behind the lag in development of the Korean welfare state.<sup>10)</sup>

Excessive delegation of the Social Security Acts is also one of the obstacles in not reaching a social consensus on the development of social security programs. Low social expenditure in Korea comes from the low level of benefits of the programs, the strict eligibility for benefits and the many needy people excluded from programs. A tax or increased insurance premiums could effectively solve this problem. The consensus and engagement of the people is inevitable as the people have to eventually undertake responsibility for the

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<sup>10)</sup> President or ministers friendly to the social policy can powerfully affect the introduction of social security programs, although administrative officers refuse it. But there is a need for more financial resources to mature the programs. At this point, the president can not solve this problem alone, but requires the corporation of the assembly or his party. In this sense, the roll of the president is limited.

financial burden. It remains, though, that excessive delegation of the Social Security Acts minimizes the opportunity and need to discuss these problems in the Assembly. This failure of political discourse leads to a lack of social consensus as the people have few chances to understand or consider themselves reasonably informed regarding problems of the social security programs. The people cannot agree with raises in taxes or insurance premiums when they do not know the reasoning behind the increase. Therefore, the excessive delegation of the Social Security Acts needs to be reduced to shape a social consensus that increases are necessary to the development of vital and viable social security programs.

In addition, the excessive delegation of the Social Security Acts is not in accordance with democratic principles and the rule of law. Such policies related to the duties or rights of the people should be decided by themselves or their elected representatives. Furthermore, substantial components of social security programs such as insurance premiums, the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries should be actively regulated by the Assembly, as it is the most important instrument to realize the social rights guaranteed by the Constitution. This is democracy. The rule of law asks also for the responsibility of the Assembly in the regulation of social security programs. Nowadays the rule of law is not limited to the rights of freedom, but extended also to social rights, because they are important preconditions to bring to fruition the rights of freedom. Thus, concrete regulation of the Social Security Acts by the Assembly observes the rule of law. If important components of social security programs are regulated by the Assembly, it contributes also to the development of Korea's young democracy.

## 5. Conclusions

The characteristics of the social policies of Korea have been shaped under the authoritarian regime (Lee, 2007a: 113-116). One feature is that the state should play a minimal financial role to manage social security programs, but that programs should be controlled by the

administration. In spite of democratization in 1987, this characteristic remains up to the present time. The delegated authority from the Assembly to the administration is an important instrument with which the administration controls various programs. The Assembly delegates authority to the administration to regulate insurance premiums, the scope and level of benefits, the eligibility for benefits and the coverage of beneficiaries which are the most important components of social security programs. Thus, the Korean administration can and does influence policy on the basis of its delegated authority.

Such a delegation from the Assembly to the administration means the Assembly voluntarily gives up its competence. This is a rational choice on the side of Korean representatives whose ultimate goal is to be nominated again and elected at the next general election. Thus, they are interested in the candidate-nomination system and the criteria for candidate selection. As Korean political parties adopt top-down methods to nominate a candidate and loyalty to the party leader is the pre-eminent criterion of candidate selection, representatives are not concerned about regulating the Social Security Acts in detail. This situation leads to a failure of will in developing policy competence. In addition, contributing to the failure of the policy competence of representatives is that members of the standing committees of the Assembly must be reorganized every two years and their members often change committee. As a result, representatives delegate authority to the administration to regulate the aforementioned important components of social security programs.

Top-down methods to nominate candidates within political parties and the criteria of candidate selection must be reformed fairly and democratically to overcome the excessive delegation of the authority overseeing the Social Security Acts. Further, the management of standing committees needs also to be reformed. These reforms will contribute to developing policy competence in representatives. If the Social Security Acts are concretely regulated by the Assembly through reform of these institutions, it will lead to the development of better social security in Korea. Bottom-up selection methods will motivate representatives to regulate the Social Security Acts in detail to appeal to the voters, the people at the root of democracy. This motivation will activate welfare politics in the Assembly which will result in

the development of the social security system in Korea.

Excessive delegation of regulation authority from the Assembly to the administration is observed in different law areas in Korea. Therefore, Bottom-up selection methods and a reform of the management of standing committees will also lead to the development of various state policy areas which are closely related to the life of the citizen because such reforms facilitate the appearance of politicians as policy expert who represent the interests of the citizen. This contributes, further, to the maturation of Korean democracy.

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# 사회보장법에서 과도한 위임의 원인과 사회정책에 미치는 영향

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대한민국 국회는 사회보장제도들의 핵심 사항들을 통제할 수 있는 권한을 행정부에 위임하고 있다. 이런 과도한 위임은 국회의원들의 합리적인 선택의 결과이다. 그들의 정치행위의 궁극적인 목적은 재공천 되어 국회의원으로서 정치생명을 유지하는 것이다. 그런데 한국의 정당들은 하향식 공천방식을 통해서 정당의 유력한 지도자에게 충성하는 국회의원들에게 공천권을 제공한다. 이런 정치 제도적 환경은 국회의원에게 사회보장법을 구체적으로 통제하려는 동기를 유발시키지 않는다. 더욱이 2년마다 한 번씩 위원을 새롭게 구성하는 국회상임위원회제도는, 국회의원이 사회보장 분야에 전문성을 축적하여 해당 법들을 구체적으로 통제하는데 장애물이 되고 있다. 이런 정치제도 환경에서 국회의원들은 사회보장제도의 핵심사항을 규율하는 권한을 행정부에 위임할 수밖에 없다. 결과적으로 사회보장법 분야에서 과도한 위임은 한국사회복지의 발전을 가로막고 있다.

**주제어:** 사회보장법, 한국의 사회정책, 위임입법, 공천제도, 국회상임위원회

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