

School Zone Automobile Accidents in Republic of Korea: Comparative Law Analysis on Criminal Responsibility of the Driver

Byung-Woon Lyou*

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ABSTRACT

In 2019, a child died by a school zone traffic accident in Asan, Chungcheongnam-do, the Republic of Korea. Just after the accident, under the name of the “Minsik Law”, the Road Traffic Act and the Specific Crime Aggravated Punishment Act were partially revised and went into effect in Korea on March 25, 2020.

The new Korean law providing for harsh penalties is designed to reduce automobile accidents in school zones. However, the penalties under the new law seems to be unconstitutionally and unduly harsh. Under the new law, a negligent driver who kills a child at a school zone could be sentenced to indefinite imprisonment, or imprisonment for 3 years or more. The criminal responsibility of a negligent driver at a school zone is the same as serious intentional felonies such as rape, robbery, abandonment resulting in death. Also, even in the case of a school zone accident, if an accident driver complies with the speed limit and other traffic laws and it is impossible to avoid the accident, the driver should not be punished. So, in order to meet the principle of proportionality, the new Korean law should be revised again.

In order to find out the appropriate level and punishment method for drivers who cause accidents in school zones, this thesis will compare and analyze the laws of Korea with those of the United States, Germany, and Japan. This paper also reviews the decision of the Constitutional Court of the Republic of Korea in February 2023 that the “Minsik Law” was constitutional.

Based on these analyses, this thesis seeks the direction and amendments to properly revise Korean law. In addition, this thesis is intended to present exemplary measures to improve the school zone safety.

1. Introduction

Following the death of a child (“Minsik”) in a traffic accident in a school zone in Asan, South Chungcheong Province, the Republic of Korea in 2019, the National Assembly of Korea adopted the so-called “Minsik Law” by amending the Act on Aggravated Punishment, Etc. of Specific Crimes [hereinafter “Specific Crime Aggravated Punishment Act”] and the Road Traffic Act, and the law

came into effect on March 25, 2020. Thus, “Minsik Law” refers not only the amendment to the Road Traffic Act for the prompt installation of traffic safety facilities, including unmanned traffic enforcement equipment, but also the amendment to the Specific Crime Aggravated Punishment Act that strengthens the criminal punishment of school zone traffic accident drivers.

However, it is questionable whether the other aspects of the law, namely the Specific Crime Aggravated Punishment Act in the “Minsik Law”, that overly strengthen the criminal responsibility of drivers in school zone

* The Professor of Law, Hongik University
E-mail: lyoubw@hongik.ac.kr

accidents will improve school zone safety.

Not only is it difficult to see that such excessive punishment is in line with the criminal law system and theory, but there is no example anywhere in the world of legislation that severely punishes negligent drivers.

Of course, it is necessary to strengthen the drivers' duty of care in school zones. However, there is no scientific and rational basis that strengthening punishment leads to the effect of strengthening driver's attention by awakening awareness and reducing school zone accidents.

There must always be a reasonable balance between criminal activity and criminal responsibility for it. A negligent traffic accident driver must be punished when he or she fails to exercise his/her knowledge or ability to reduce or eliminate, a hazard. Moreover, public sentiment, emotion, or indifference is difficult to be considered in criminal responsibility.

"...we must proceed carefully when permitting criminal liability to turn on such attitudes as culpable indifference, lest we punish vicious or unvirtuous feelings that are not sufficiently connected to wrongful acts, and lest we punish disproportionately for attitudes ..."⁽¹⁾

During the legislative process of the "Minsik Law", there was no review of evidence that child safety would be substantially improved as a result of the legislation. In fact, it is judged that there has been little effect of reducing car accidents in school zones since the enforcement of the law.⁽²⁾

Some Korean media reports as if the number of traffic accidents in school zones decreased by 1,500 from 6,386 in 2019 to 4,830 in 2020 over the same period with the enforcement of this law (e.g., YTN, Oct. 11, 2020). However, it can be said that it is a distorted report considering that traffic volume decreased in the aftermath of the COVID-19 infectious disease, and the total number of traffic accidents and fatal accidents decreased by 10%, and the number of days closed and school attendance decreased significantly. Even if there is an effect of improving safety through the revision of law, it seems to be an effect of installing and improving school

zone road traffic facilities, not an effect of increasing criminal responsibility.

In the nine months (March 25, 2020 to December 31, 2020), which was less than a year after the enforcement of the "Minsik Law", the number of accidents that occurred in the Busan area was 44, which increased more than before (MBN, Mar. 30, 2021). On November 17, 2020, an 8.5 t truck shocked a family crossing a crosswalk in a school zone in an apartment complex in Gwangju (Chosunilbo, Nov. 11, 2020). The accident resulted in another devastating school zone accident that killed her 3-year-old daughter in her stroller and seriously injured her 5-year-old daughter and her mother. What should be noted in this accident is that pedestrian traffic lights have not yet been installed on the crosswalk on the four-lane road.

In short, there is no appreciable improvement in child safety commensurate with the excessive care and potential for excessive criminal punishment imposed on drivers by this legislation.

This thesis first aims to point out the mistake in the direction of the legislation through the analysis of the school zone accident that triggered the legislation of the "Minsik Law". Next, this paper seeks desirable institutional improvement plans including law revision for accident drivers based on international comparative legal reviews of criminal responsibility. Considering that the "Minsik Law" imposes somewhat heterogeneous criminal responsibility from the perspective of the Korean legal system or of comparative law, this thesis seeks to urge an international comparative legal evaluation of the law. Particularly, to find out the appropriate level and punishment method for drivers who cause accidents in school zones, this thesis will compare and analyze the laws of Korea with those of the United States, Germany, and Japan. This thesis also reviews the decision of the Constitutional Court of the Republic of Korea in February 2023 that the "Minsik Law" was constitutional. Based on these analyses, this thesis seeks the direction and amendments to properly revise the Korean law.

In addition, this thesis is intended to present exemplary non-punitive measures to improve the school zone safety.

2. Analysis of the accident that triggered the legislation of the “Minsik Law”

2.1. Brief facts of the case

The accident occurred around 6:00 PM in front of Onyang Middle School in Asan City, South Chungcheong Province, Korea. It was an incident in which a 9-year-old child who was crossing a crosswalk was shocked and killed by the offender vehicle (New Korando), which was operating at 23.6 km/h in a school zone with a speed limit of 30 km/h.

Looking at the video of the black box containing the scene of the accident, another vehicle stopped through the crosswalk in one lane, so offending vehicle driver traveling in the opposite lane thought it was not easy to identify a short child on the crosswalk. While the victim was crossing the crosswalk from one sidewalk to the other (holding the hand of another child), the victim was hit by a car driving straight in the opposite lane. When measuring the time with the video of the accident black box, the time taken for the victim child to be shocked by the offending vehicle after entering the crosswalk is about 1.12 seconds.

This accident occurred when the child went to his mother’s store instead of school, and such an accident is highly likely to occur not only in the school zone area, but also on roads without crosswalks and railroad tracks without access restrictions.

2.2. Criteria for analysis

The accident can be analyzed based on the driver reaction time (DRT). This paper intends to apply the DRT of “Kölner-Modell”, which was defined in 1982 and is currently used in German legal practice.⁽³⁾ The DRT is important both for the course of the accident and for its subsequent analysis. Of course, DRT can vary significantly depending on lots of human factors or complexity of the driving situation. So, the DRT for each accident is variable and is characterized by a number of parameters that are different for each individual driver.⁽⁴⁾

Table 1 DRT

Order	Driver’s Reaction and Brake Application Process	Time
1	Recognition of Warning	?
2	Event Recognition → Event Analysing	0.48 second
3	Event Analysing → Starting Muscular Reaction	0.45 second
4	Starting Muscular Reaction → Touch Brake Pedal	0.19 second
5	Touch Brake Pedal → Brake Pressure Increase	0.05 second
6	Brake pressure increase → Start Brake Control	0.17 second
7	Start Brake Control → Vehicle Stop	?

According to “Kölner-Model”, the driver’s response and brake operation process are shown in Table 1. It takes more than 1.34 seconds in 98% of cases for the driver to recognize and react to the situation and apply the brakes (not until the car stops) after an accident occurs. To this 1.34 seconds, the time from brake operation to vehicle stop is added in proportion to the vehicle’s driving speed. Therefore, it is judged that a time of about 2 seconds or more is required until the vehicle stops after an emergency occurs. Another study found DRT to be between 2.1 and 2.3 seconds.⁽⁵⁾

2.3. Evaluation according to analysis

In the accident, it was judged that a normal driver was not expected to stop the vehicle in about 1.12 seconds after recognizing a child entering the crosswalk, even if the situation in which the view of the crosswalk was obstructed by other vehicles was not considered.

Therefore, in the case in which the offender driver drove within 30 km/h in a school zone, it is very difficult to prove his negligence.

Nevertheless, the Korean National Assembly, influenced by Min-sik’s case, initiated legislation to drastically strengthen the criminal responsibility of drivers in school zone accidents.

In addition, in April 2020, the first trial court sentenced the driver of Min-sik’s accident to two years Imprisonment (without forced labor) according to the law before the “Minsik Law”, and in August 2020, the appeal court dismissed the appeal. These rulings imposed virtually criminal strict responsibility on the driver of the school zone accident.

3. Legislative examples related to school zone traffic

3.1. Republic of Korea

The paragraph 1, article 12 of the Road Traffic Act states “... to protect children from the danger of traffic accidents... designate a certain section as a children’s protection area and... Traffic speed can be limited to 30 kilometers per hour”, stipulating traffic-related “child protection zones,” namely, the school zone system.

The paragraph 5, article 12 of the Road Traffic Act, which was amended at the end of 2019 under the name of the “Minsik Law”, mandated the installation of speeding cameras and speed bump traffic lights in school zones, and facilities and equipment for the safety of children such as unmanned traffic enforcement equipment and crosswalk signals. installed in the first place.

In addition, the Specific Crime Aggravated Punishment Act has been amended as adding the Article 5trēdeciēns under the name of the “Minsik Law”. The Article 5trēdeciēns provides that drivers in school zone accidents are subject to ① indefinite imprisonment (with forced labor), or imprisonment (with forced labor) for 3 years or more if they cause the death of a child (person under the age of 13), and ② in the case of causing injury to a person, it was punished very strongly by imprisonment (with forced labor) for 1 year to 15 years or a fine of 5 million KRW to 30 million KRW.

Prior to the revision of this law, in accordance with Article 3 (1) of the Special Act on Handling of Traffic Accidents and the Criminal Act, imprisonment (without forced labor) for up to five years or a fine of up to 20 million KRW could be imposed. Especially in the case of the death of a child, a fine is not permitted and

is punishable by life or imprisonment for a term of 3 years or more.

3.2. The United States

In the United States, a school zone refers to a road within a certain distance from a school boundary (see, AL Code § 32-5A-181; N.J.S.A 39:1-1). Also, “school crossing” as part of a school zone is defined as pedestrian crossing where students must cross the road near the school (see, N.J.S.A 39:1-1).

A traffic offender’s responsibility in a school zone is usually to impose fines and penalty points. For example, in the case of New York State, fines and penalty points differ depending on the situation and whether or not school classes are held, as shown in Table 2 {N.Y.-VTL 1180-(c)}. In New York State, if a driver’s penalty points reach 11, their driver’s license is suspended. Also, a conviction for speeding in a school zone in New York can seriously impact one’s auto insurance premiums.

It is very important to note that most states in the United States distinguish between careless driving (negligence, e.g., N.J.S.A. 39:4-128.5) and reckless driving in their criminal penalties (e.g., N.J.S.A. 39:4-96). Drivers’ violations of common traffic regulations are careless driving.

Under N.J.S.A. 39:4-128.5, if the accident results in injury to a person, the driver may face fines of up

Table 2 Fines and penalty points for violating the New York State school zone speed limit

Violation	Total Fine		Point Penalties
	on school days	school not in session	
Speeding 1-10 MPH over limit	133~243 USD	178~693 USD	3 points
Speeding 11-20 MPH over limit	178~393 USD	268~693 USD	4 points
Speeding 21-30 MPH over limit	478~993 USD	568~993 USD	6 points
Speeding 31-40 MPH over limit	718~1,143 USD	898~1,743 USD	8 points
Speeding 41+ MPH over limit	943~1,368 USD	1,123~1,968 USD	11points

to 1,000 USD, a six-month license suspension, and community service. If the accident results in serious bodily injury, the driver may face fines of up to 1,000 USD, a one-year license suspension, and community service. If the accident results in the death of a person, the driver may face fines of up to 1,000 USD, a five-year license suspension, and community service.

On the other hand, in New Jersey, criminal responsibility for school zone accident drivers who drove recklessly is, of course, much heavier than negligent responsibility. The State of New Jersey defines reckless driving as driving in a manner that willfully or disregards the rights or safety of another person, or knowingly or in a manner that endangers or endangers persons or property (e.g., N.J.S.A. 39:4-96). While the law does not identify specific acts that constitute reckless driving, some examples of conduct that may be classified as reckless driving in New Jersey include driving while intoxicated (DWI), very excessive speeding, etc. As such reckless driving is repeated, the level of punishment increases and if serious consequences such as death or injury are caused, the punishment is increased as that for felony. Particularly, under N.J.S.A. 2C:11-5, vehicular homicide is a criminal charge in New Jersey for causing the death of another person by recklessly driving a vehicle. In New Jersey, vehicular homicide is a Second Degree Felony, which provides for a “presumption of incarceration,” meaning if you are convicted of this crime, you are presumed to be given jail time. The jail sentences range between five and ten years, and penalties also include \$150,000 in fines. In addition, the court can impose a minimum prison term between one third and one half of the initial sentence, a term of three years, or whichever sentence is higher if the following factors are met: ① the defendant was handling a motor vehicle while under the influence of drugs or alcohol, ② the defendant was operating the vehicle while his driver’s license was revoked or suspended, ③ the defendant refused to submit to a breath sample.

Vehicular homicide would be considered a First Degree Felony if the defendant violated New Jersey’s DWI and driving under the influence (DUI) laws, and the accident happened at a school crossing or on school property.

If a defendant is convicted of a First Degree Felony, it will also be a “presumption of incarceration” and jail time can range anywhere from ten to twenty years with fines of up to \$200,000. In addition, the court will also impose a minimum prison term between one third and one half of the initial sentence, a term of three years, or whichever sentence is higher.

The State of Illinois defines reckless driving as driving a vehicle with willful or complete disregard for the safety of other people or property and driving the vehicle hovering over a railroad crossing, bridge access, or hill slope {Illinois Statute 625 ILCS 5/11-503 (a)}.

“A person commits reckless driving if he or she:
(1) drives any vehicle with a willful or wanton disregard for the safety of persons or property; or
(2) knowingly drives a vehicle and uses an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.”

The State of Illinois identifies the victims of reckless driving in school zones as crossing guards and school children, and increases the level of punishment as follows in proportion to the degree of damage: ① a driver who engages in such reckless driving will be punished with a class A misdemeanor [imprisonment of not more than one year or a fine of 75-2,500 USD {Illinois Statute 625 ILCS 5/11-503 (b)}], ② in particular, if the violation causes bodily harm to a child or a school crossing guard while the school crossing guard is performing his or her official duties, is guilty of a Class 4 felony [1-3 years imprisonment or 25,000 USD fine], and ③ if the violation causes great bodily harm or permanent disability or disfigurement to a child or a school crossing guard while the school crossing guard is performing his or her official duties, is guilty of aggravated reckless driving. Aggravated reckless driving under this subsection (d) is a Class 3 felony [2-5 years imprisonment] {Illinois Statute 625 ILCS 5/11-503 (d)}.

In short, Illinois makes it a felony for reckless driving to injure or seriously injure a child or a crossing guard

while the school crossing guard is performing his official duties, that is, during school hours.

To legislate the “Minsik Law”, the Korean National Assembly referred to only the criminal punishment part among the provisions for reckless drivers in cases where they cause injury, serious injury, or death to crossing guards and school children at school zones in Illinois.

3.3. Germany

In Germany, drivers who violate traffic laws, including violations of the maximum speed of 30 km/h in school zones, are punished with fines and/or penalty points (Der Aktuelle Bußgeldkatalog, 2017). However, in Germany, accident drivers in school zones are specially distinguished and are not subject to aggravated punishment.

The Section 315c of German Criminal Code punishes a driver for *Gefährdung des Straßenverkehrs* (the crime of causing traffic danger) with imprisonment of up to five years or a fine as follows: ① Inability to drive after drinking or inhaling intoxicants, or because of a mental or physical disability driving while not in a state of being; ② Serious and indiscriminate (violent) violation of traffic laws such as ignoring right of way, violation of overtaking, violation of crosswalks, excessive speeding at points where it is impossible to look ahead or at intersections, and U-turns on highways or motorways, resulting in damage to the body and life of others or causing damage to property. In Germany, in the case of ①, the attempted offender is also punished.

In this way, Germany integrates criminal punishment for drunk driving and reckless drivers, punishing them with the same level of punishment, but in the case of drunk driving, even the attempted offender is punished.

3.4. Japan

Under Japanese law, traffic violations in school zones are not punished differently from other traffic violations. Violations of the Road Traffic Act in school zones are punished with fines of less than 50,000 JPY like other traffic violations (see, Articles 119, 65 of the Road

Traffic Act). However, if such a traffic offense is committed while intoxicated, it is punishable by imprisonment for up to five years or a fine of up to one million JPY (see, Articles 117bis, 65 of the Road Traffic Act). If a person dies or is injured as a result of a traffic accident in a school zone, the driver may be prosecuted for manslaughter or injury under the Japanese Penal Code (see, Articles 209, 210 of the Penal Code).

In addition, the Japanese Road Traffic Law prohibits parents or guardians from leaving children unattended in traffic hazards (Paragraph 3 of Article 14 the Road Traffic Act):

“A person responsible for the protection of an elementary schooler (meaning a person at least six years old but less than 13 years old; the same applies hereinafter) or a child not yet of school age (meaning a person under six years old; the same applies hereinafter) must not allow the elementary or child not yet of school age to play on a busy road, at a railroad crossing, or on road in the vicinity of a railroad crossing; and must not allow a child not yet of school age for whose protection the person is responsible to walk on such a road or crossing unaccompanied by that person or a caretaker acting in that person’s stead.”

4. Problems with Korean law (the “Minsik Law”)

4.1. Unconstitutionality of the Provision of Specific Crime Aggravated Punishment Act

Legislation of Korea must satisfy the requirements of legislative principles such as constitutionality, necessity, and proportionality. The constitutionality requirement is that prior to constitutional review by the Constitutional Court, which is a post-filtering device for defective legislation, it is necessary to review whether or not the constitutionality is unconstitutional in the legislative process to ensure legal stability and reliability.

The requirement of necessity is that legislation is necessary for a specific policy purpose, and must have the effectiveness to realize the purpose and the efficiency as a policy tool. In addition, considering the future

development situation, it is the content of the requirement that should not be legislated emotionally, improvisatory, or hastily. In fact, the Min-sik accident raised the sympathy of the Korean people and the need to protect children from road traffic, and the National Assembly quickly responded with the “Minsik Law”.

The proportionality requirement is included in the constitutionality requirement as a review of whether the autonomy of the regulated area is excessively limited due to legislative intervention. Also, necessity and proportionality requirements applied to legislation refer to the ‘non-excessive principle’, a principle applied to restrictions on fundamental human rights in the Constitution.

Of course, improving the safety of school zone facilities by revising the Road Traffic Act in the name of “Minsik Law” is a reasonable measure that corresponds to the cause of Min-sik’s accident. Such an amendment is in line with the aforementioned legislative requirements. Such additional installation and improvement of school zone safety facilities must be pursued rapidly and progressively as long as the budget is supported.

As shown in Table 3, however, the Article 5trēdeciēns of the Crime Aggravated Punishment, which was added by the “Minsik Law” punishes the negligent drivers in

school zone accidents resulting in child death more severely than serious intentional felonies such as rape, robbery, abandonment resulting in death. The punishment for the drivers is slightly lower than that for willful murderers.

Regarding the necessity and proportionality requirements of legislation, is the strengthening of the driver’s duty of care possible only through the strengthening of criminal responsibility in the nature of ultima ratio? In Korea, unlike other countries, there are many cases in which school zones, which are installed for the safety of students going to and from school, are installed not only in designated areas near schools but also in front of apartment complexes. And in addition to the ‘Children’s Protection Area’, ‘Elderly Protection Area’, ‘Disabled Protection Area’, and even ‘Resident Protection Area’ have been set up on certain roads. Considering that all residential areas are inhabited by children, the elderly, and the disabled, the Korean system is not clear about the ‘specificity’ of school zones that can focus drivers’ attention. I believe that it is necessary to clearly install school zones on roads near schools during children’s commuting time to improve driver’s attention.

4.2. Absence of ‘Recklessly’ *Mens Rea* in Korean Criminal Law

In criminal law, *mens rea* (culpable states of mind, subjekfiver Tatbestand) is the mental element of a person’s intention to commit a crime; or knowledge that one’s action (or lack of action) would cause a crime to be committed. The Latin maxim *actus reus non facit reum nisi mens sit rea* (the act is not culpable unless the mind is guilty) became the Common Law element for criminal responsibility before 17th Century.⁽⁶⁾ *Mens rea* is subjective component as an essential component of many crimes in Korea, the United States, and Germany. According to the Model Criminal Code (MPC) of the United States, *mens rea* includes purposely, knowingly, recklessly, and negligently (MPC §2.02). The MPC organizes and defines, *mens rea* into four hierarchical categories: ① acting purposely – the defendant had an underlying conscious object to act; ② acting knowingly

Table 3 Comparison of punishments under the “Minsik Law” and those for major serious crimes under the Korean Criminal Law

Crimes	Punishment
Driving that causes child death in traffic accident in school zone	Indefinite imprisonment, or imprisonment for not less than 3 years
Intentional Murder	Death penalty (Concerning death penalty, Republic of Korea is an abolitionist in practice country), indefinite imprisonment, or not less than 5 years
Rape	imprisonment for not less than 3 years
Robbery	imprisonment for not less than 3 years
Abandonment resulting in death	imprisonment for not less than 3 years

– the defendant is practically certain that the conduct will cause a particular result; ③ acting recklessly – the defendant consciously disregarded a substantial and unjustified risk; and ④ acting negligently – the defendant was not aware of the risk, but should have been aware of the risk

A serious problem is that ‘recklessly,’ which is the intermediate *mens rea* between intentionally (purposely or knowingly) and negligently used in the United States or German law, does not exist in Korean criminal law. Since there is no *mens rea* for ‘recklessly’ in the Korean Criminal Law, it is inevitable to apply the same provisions of the law without distinguishing between a case where a driver drives recklessly in a school zone and a case where a driver violates traffic regulations only by driving negligently. Compared to the legislation of most advanced countries, this is considered to be a very unreasonable and unfair punishment method.

As resources for the legislation of the “Minsik Law”, the National Assembly’s legislative support organization reported the National Assembly that the New Jersey state law punishes a driver in a school zone accident with up to 20 years in prison, and the Illinois state law punishes the accident driver causes one person death for 3 to 4 years in prison and causes two persons death 6 to 28 years in prison.⁽⁷⁾ However, such New Jersey or Illinois laws are applied to the case of death as a result of “reckless driving” and cannot be accepted as it is in Korean criminal law without *mens rea* of “recklessly”. This means that the “Minsik Law” was enacted based on inappropriate resources.

In fact, the driver of Min-sik’s accident was driving at 23.6 km/h in the school zone where the speed limit was set at 30 km/h, so it was not the case of reckless driving.

4.3. Competition between “Yoon Changho Law” and “Minsik Law”

According to the Article 5undeciens of the Specific Crime Aggravated Punishment Act, amended by the “Yoon Changho Law” named after the victim of a drunk driving traffic accident, ① if a driver injures another

person by driving while under the influence of alcohol or drugs, it is punishable by imprisonment for not less than 1 year but not more than 15 years, or a fine of not less than 10 million KRW and not more than 30 million KRW (prior to revision, imprisonment for not more than 10 years or fine of 5 million KRW), and ② if the victim dies, Indefinite imprisonment or imprisonment for not less than 3 years (prior to revision, imprisonment for not less than 1 year). In this way, the the “Yoon Changho Law” greatly increased the punishment of drunk drivers who caused injury or death.

However, if a child injury or death accident occurs due to drunk driving in a school zone, that is, there may be cases in which the “Yoon Changho Law” and the “Minsik Law” compete. The case where one act corresponds to several different crimes is called ‘conceptual crime concurrence (Idealkonkurrenz)’ in criminal law theory. If one (driving) behavior is regarded as a conceptual crime concurrence corresponding to two different crimes and handled conceptually, it can be far from the principle of criminal responsibility corresponding to specific criminal acts.

4.4. Problems with the Ruling of the Constitutional Court of Korea in February 2023

In the “Minsik Law” Case (2020Hun-Ma460, Decision date: Feb. 23, 2023), the Constitutional Court of Korea, in an 8-to-1 opinion, rejected the complaints that the “Minsik Law” was unconstitutional.⁽⁸⁾

The eight judges of the court held that the general right to freedom of action was not infringed by the Article 5undeciens of the Specific Crime Aggravated Punishment Act. Also, they argued that the Article did not violate the principle of clarity of criminal legality. According to them, in the case of death of a child, the statutory sentence is defined as indefinite imprisonment, or imprisonment for not less than 3 years, but it is possible to impose a suspended sentence even if the judge does not reduce the sentence. Therefore, even if there is a difference in illegality and blamability due to the various contents and degree of violation of the driver’s duty of care and the degree of damage suffered

by children, this is within the range that could be sufficiently adjusted by the sentencing of the judge.

However, it is a very unreasonable and strange judgment to judge the unconstitutionality of an excessive statutory sentence by considering the possibility of suspension of execution in a specific case or the judge's sentencing rather than evaluating the criminal responsibility itself.

Judge Lee Eunae of the court provided dissenting opinion. According to her, the Article 5ündeciēns of the Specific Crime Aggravated Punishment Act restricts the plaintiffs' right to freedom of action by setting the lower limit of the statutory penalty excessively high and punishing the driver with an excessively heavy penalty beyond the penalty commensurate with the driver's negligence and the degree of damage, thereby limiting the plaintiffs' right to freedom of action. Those restrictions are too large even considering the importance of the public interest. Also, the Article 5ündeciēns relies only on the strengthening of punishment without sufficient consideration of non-punitive measures, and uniformly punishes even the types of violations that do not require aggravated punishment or are relatively light in nature, thereby reducing the degree necessary for the original function of criminal punishment. She held that the Article 5ündeciēns violated the general freedom of action of the claimant by violating the rule against excessive restraint."

5. Conclusion: Suggestions for Improving the Korean School Zone System

5.1. Proposal for Amendment to Korean Criminal Law

This thesis proposes to amend the Korean Criminal Law (including the Specific Crime Aggravated Punishment Act), similar to German law. In other words, adding the 'reckless' *mens rea* to the criminal law and integrating all reckless driving, including drunk driving (DWI) and reckless driving in school zones, into 'reckless driving' or 'the crime of causing traffic hazard'. In accordance with the example of the United States legislation, it is

also necessary to amend the Korean Criminal Law, which punishes drivers who cause injury, serious injury, or death to children on their way to or from school by 'reckless' driving at specific times in school zones. Incorporation of 'reckless' *Mens Rea* into Korean law can reasonably regulate drunk driving accidents in school zones that continue to occur (see, Chosunilbo, April 17, 2023).

More specifically, the following amendments to the Korean Criminal Law are proposed: ① A new definition of 'reckless driving' is established to prevent reckless driving in school zones, Driving Under Influence (drunk driving or drug driving), and define other reckless driving behaviors; ② In the case of causing an accident by driving recklessly during school arrival and departure hours in a school zone, resulting in the death of a child attending or leaving school, the driver shall be sentenced to life imprisonment or imprisonment for a term of 3 years or more, and if the driver causes injury to a child shall be punished by imprisonment for not less than 1 year and not more than 15 years or a fine of not less than 5 million KRW and not more than 30 million KRW.

5.2. Enactment of "Child Student Commuting Regulation"

It is necessary to clearly and in detail define the responsibilities and obligations of parents and other guardians, school authorities, and school bus drivers (academy drivers) by enacting tentatively named "Child Student Commuting Regulation" as sub-administrative statutes of the Road Traffic Act. This regulation can include detail traffic guidance and non-punitive measures for child students to and from school.

5.3. Other Suggestions

As in the Japanese legislative example mentioned in Chapter II, Section D of this thesis, the duty of parents or guardians to protect children from the danger of road traffic or traffic accidents should be more clearly stipulated in laws and regulations. In particular, when children under the age of 10 walk to and from school, they must be accompanied by an adult or someone who

can safely walk with them. In fact, the “Min-sik” accident could have been prevented if parents hadn’t left their 9-year-old child in danger of road traffic.

Rules and Policy for the increase of school zone safety should target to raise up drivers awareness, so that they are operating safely with or without children visibly present.⁽⁹⁾ So, it is necessary to clearly set the school zone to its original function and to enable drivers to clearly recognize entering the school zone as various identification facilities. The ‘child protection zone’ system of Korea should be improved by focusing on the original function of the school zone, that is, the purpose of students going to and from school and the effect of enhancing safety. In the current system, there is a possibility of mistaking the school zone as an area where children can safely come and play. In June 2021, when a child stopped in a school zone and jumped in front of a moving car, the so-called “Minsik Law play” became an issue, the Prime Minister of the Republic of Korea said, if a child plays with the civil law, the parents must be fined and ordered to complete prevention education said (Segyeilbo, June 2, 2021). In Korea, even a smartphone game titled “Break through the school zone “Minsik Law” is scary” appeared. It is a game with the setting that a taxi entering a school zone must avoid children running in the opposite direction to the left and right, and if it collides with a child shortly thereafter, it will be immediately arrested by the police.

It is necessary to clearly and in detail define the responsibilities and obligations of parents and other guardians, school authorities, and school bus drivers (academy drivers) by enacting tentatively named “Child Student Commuting Regulation” as sub-administrative statutes of the Road Traffic Act. This regulation can include detail traffic guidance for child students to and from school.

According to one survey, more than half of child traffic accidents occur between 2pm and 6pm.⁽¹⁰⁾ The fact that children’s traffic guidance activities are mainly conducted in the morning when they go to school is considered to be one of the reasons why traffic accidents in which children are victims often occur after school hours.

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