

***Case on Specific Crimes Aggravated Punishment Act Clause Providing Enhanced Punishment for Cases Involving School-Zone Traffic Accidents Resulting in Injuries or Deaths to Children (So-Called “Minsik Law” Case)***

[2020Hun-Ma460, 2020Hun-Ma862 (consolidated), February 23, 2023]

\* First Draft

In this case, the Court rejected the complaints of Complainants, reasoning that their right to general freedom of action is not infringed by Article 5-13 of an Act on the Aggravated Punishment, Etc. of Specific Crimes, which prescribes that, in a case involving a violation of the obligation to observe speed restrictions or drive safely in a school zone, such violation resulting in injury to a child shall be punished by imprisonment with labor for not less than one year but not more than 15 years, or by a fine of not less than five million won but not more than 30 million won, and such violation resulting in death of a child shall be punished by imprisonment with labor for an indefinite term or for not less than three years.

**Background of the Case**

Complainants are drivers holding driver’s licenses. They filed constitutional complaints, arguing that their right to general freedom of action, etc. are infringed by Article 5-13 of an Act on the Aggravated Punishment, Etc. of Specific Crimes, which provides enhanced punishment for a case involving death of or injury to a child caused by a violation of the obligation to drive safely, etc. in a school zone.

**Subject Matter of Review**

The subject matter of review in this case is whether Article 5-13 of the former Act on the Aggravated Punishment, Etc. of Specific Crimes (amended by Act No. 16829 on December 24, 2019 and before amendment by Act No. 19104 on December 27, 2022) (hereinafter referred to as the “Provision at Issue”) infringes a fundamental right of Complainants. The Provision at Issue reads as follow.

**Provision at Issue**

The former Act on the Aggravated Punishment, Etc. of Specific Crimes (amended by Act No. 16829 on December 24, 2019 and before amendment by Act No. 19104 on December 27, 2022)

## Article 5-13 (Aggravated Punishment for Death of and Injury to Child in School Zone)

Where a driver of a motor vehicle (including a motorcycle) commits against a child (referring to a person who is under 13 years of age; hereinafter the same shall apply) a crime provided for in Article 3, Section (1) of the Act on Special Cases Concerning the Settlement of Traffic Accidents in violation of the obligations under Article 12, Section (3) to take measures in accordance with Section (1) of the same Article and pay attention to the safety of children while driving in a school zone, the driver shall be subject to enhanced punishment as follows:

1. Where the crime causes death of a child, the driver shall be punished by imprisonment with labor for an indefinite term or for not less than three years;
2. Where the crime causes injury to a child, the driver shall be punished by imprisonment with labor for not less than one year but not more than 15 years or by a fine of not less than five million won but not more than 30 million won.

### **Summary of the Decision**

#### **1. Whether the void-for-vagueness doctrine under the *nulla poena sine lege* principle is violated**

Viewing together the amendment history and intent of the Road Traffic Act imposing on drivers detailed obligations relating to the operation of vehicles, and the developments and history of the Road Traffic Act concerning the establishment of provisions designating separate zones for pedestrians in need of special protection, the Court finds that a driver with sound common sense and a general sense of justice can fully understand the specific meaning of the obligation to drive safely in a school zone by considering, *inter alia*, the types and forms of roads and the presence of crosswalks, signals, major signs, and children in that zone. It is difficult to believe that the Provision at Issue invites arbitrary enforcement by the authorities interpreting and applying the law. Thus, it cannot be said that the Provision at Issue infringes Complainants' right to general freedom of action in violation of the void-for-vagueness doctrine under the *nulla poena sine lege* principle.

#### **2. Whether the rule against excessive restriction is violated**

The Provision at Issue is aimed at protecting children from the risk of traffic accidents by requiring drivers to observe speed restrictions and pay attention to child safety in school

zones.

Our country has one of the highest rates of pedestrian fatalities and the highest numbers of pedestrian deaths per 100,000 population. Despite continuing traffic accidents in school zones, the country has yet to move away from a backward, vehicle-centric culture. Therefore, both the installation of school zones, focusing on limited areas such as elementary school surroundings where children frequently pass, and the imposition of strict duty of care and severe penalties for violators, are an inevitable measure to prevent traffic accidents and protect children.

Under the Provision at Issue, if a child is injured, the statutory penalty for the offense is imprisonment with labor ranging from 1 to 15 years, or a fine varying from 5 to 30 million won. In the context of a light violation, if a fine is chosen, the court may suspend its execution by considering nonstatutory mitigating factors, and if imprisonment with labor is chosen, the court may do so without relying on such factors. Not only this, but it may also issue a suspended imposition of sentence. In cases involving the death of a child, although the statutory penalty is imprisonment with labor for an indefinite term or for not less than 3 years, it is possible to impose a suspended execution of the prison sentence even if the judge does not consider nonstatutory mitigating factors. Therefore, although the content and severity of the driver's violation of duty of care and the extent of harm suffered by the child vary and there are differences in illegality and potential for criticism, these can be satisfactorily overcome by the sentencing authority of a judge.

Even if measures such as traffic calming techniques and an intensified crackdown on illegal parking and stopping are institutionalized, child traffic accidents will continue to occur if drivers violate their duty of care while driving. Therefore, it cannot be said that increased penalties are justified only when non-punitive measures have been introduced and implemented first and then proven ineffective.

The disadvantages faced by drivers who are required to exercise heightened caution in school zones and restricted in how they drive are outweighed by the public interest in imposing enhanced punishment for drivers violating their duty of care and ensuring that children avoid the dangers of traffic accidents and lead safe and healthy lives.

Accordingly, the Provision at Issue does not infringe the right to general freedom of action of Complainants in violation of the rule against excessive restriction.

### **Summary of Dissenting Opinion of One Justice**

#### **Whether the rule against excessive restriction is violated**

Traffic accidents in school zones can occur due to explicitly illegal acts by drivers, such as traffic signal violations. However, they can also result from minor negligence on the part of drivers in the contexts of sudden street crossings by children, of vehicles illegally parked or stopped in the vicinity, etc. Even in cases where children are injured or killed due to a driver's violation of duty of care in a school zone, there are diverse types of violations whose severity varies and is difficult to assess uniformly. Thus, in accordance with the principle of liability, the range of statutory penalties should be established in such a way as to allow judges to impose sentences tailored to the individual circumstances of each offense.

Excessive penalties for negligent drivers may spread a negative perception that they have been merely unfortunate to be punished, rather than producing general deterrence of raising driver awareness and preventing accidents. Also, it is difficult to expect specific deterrence of promoting drivers' rehabilitation into society.

Traffic calming techniques serve as an effective way of raising vigilance for safe driving among drivers in school zones. In fact, studies have shown that they have reduced the frequency of traffic accidents. However, the Provision at Issue relies solely on the enhancement of punishment without sufficient consideration of non-punitive means. It sets excessive statutory penalties and significantly deviates from the degree necessary to serve the original function of criminal punishment by uniformly enhancing punishment even for offenses that do not warrant such enhancement or are relatively minor in nature.

The Provision at Issue sets the minimum statutory penalties at an overly high level, imposing heavy penalties on drivers far beyond the degree commensurate with their negligence, the extent of damage, etc. As a result, it restricts the right to general freedom of action of Complainants and places them at a great disadvantage, which is severe even when considering the importance of public interest.

Therefore, the Provision at Issue infringes the right to general freedom of action of

Complainants in violation of the rule against excessive restriction.