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## Criminal LAW Proposals for the Protection of Industrial Security Technologies in KOREA

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### Abstract

*In this paper, we have examined the issues to be considered for the protection of industrial security technology from a criminal law perspective. Infringement of industrial security technology is a field that can threaten the existence and security of the state as well as impeding national competitiveness, and it is common to discuss it in the national security area. Furthermore, the threat of national security has diversified, and the effective control over industrial security technology is getting more difficult. Therefore, this study distinguishes two important areas to be considered for protection of industrial security technology.*

*First of all, although industrial security technology belongs to the field of protection, it is confirmed that unconditional protection is moving toward a hyperconnected society, and that there is no reality at the moment. Secondly, it pointed out that criminal punishment is at the forefront of protection of industrial security technology, especially that the creation of new crime should be judiciously cautious. In the concrete criminal procedure, it prevents prevention of intentional leakage of sensitive industrial security technology.*

*In order to proactively protect the industrial security technology, it is necessary to consider how to institutionalize information sharing among the related organizations involved in the protection of industrial security technology. In addition, the protection of industrial security technology can be limited only by the efforts of the public sector. Therefore, we examined the possibility of utilizing the private investigator. Finally, we assume that the industrial security technology is traded in the dark net, which is newly emerging as a crime market.*

**[Keywords]** *Justice & Law, Industrial Security, Balance of Protection and Utilization, Dark Net, Symbolic Criminal Law*

### 1. Intro

Security is an abbreviation of security and means etymological freedom from threats. In particular, national security means that the state, which is a political community, is free from external threats. At one time, there were times when national security itself was perceived as the basic purpose of the state. And there was also a time when such national security was traditionally aimed at securing the nation's existence and security in the military and diplomatic aspects of international relations.

However, with the progress of economicization, globalization, and informationization, it is necessary to make certain changes to the concept of national security. The non-state actors alienated from the international order have not only become the dominant players in international relations due to the progress of globalization and informationization, but also the times when rapid economic development transcends the economic realm within the state, Respectively. Accordingly, the concept of national security has also been changed to a comprehensive security concept[1].

In particular, the industrial security area will be regarded as a security area that is related not only to traditional political and military areas but also to economic areas. In the past, criminal legal interest in the protection of industrial security technology has been relatively insufficient, but the criminal legal response of industrial security technology is also important in that the influence and importance of industrial security technology and the meaning of the technology are highly deteriorated. In this paper, we propose a proposal for the protection of industrial security technology from a perspective different from the conventional one though it is a criminal law view.

## **2. Industrial Security and Comprehensive Security as a Premise Concept**

### **2.1. Concept of industrial security**

The term "industrial security" was introduced to the public in October 2003 when the Center for Industrial Confidentiality was established at the National Intelligence Service and the importance of industrial security was emphasized[2].

In 2006, the "ENFORCEMENT DECREE OF THE ACT ON PREVENTION OF DIVULGENCE AND PROTECTION OF INDUSTRIAL TECHNOLOGY" was enacted, and industrial security technologies and security industries were specified in legal terms. In this context, industrial security in the broad sense can be seen as "any effort to protect all economic activities that produce goods and services from crime"[3].

Conventional industrial security has a wide variety of concept definitions, but generally focuses on preventing industrial technology or leakage of confidential information. However, since the concept of industrial security may lack concrete validity, it is reasonable to consider industrial activities as all kinds of activities that protect all kinds of threats.

### **2.2. Comprehensive security as a new challenge in industrial security**

Traditionally, national security was based on military security. However, due to the end of the ideological confrontation between nations and the rise of non - state actors in accordance with the progress of information and globalization, Conflicts arise due to territorial and economic interests. In other words, the changed international situation calls for a new paradigm of national security. The recent national security paradigm is not focused on traditional ideology or military superiority but threatens and paralyzes the people, territory, sovereignty, Elements also appear as a concept of comprehensive security that can threaten national security[4].

The paradigm of this new security environment is characterized as follows. 1)As discussed above, in the setting up of the concept of security, not only from the military point of view, but also from the non-military elements such as politics, economy, society, environment and technology. 2)The fundamental change of the subject and the threatened object is that the viewpoint of security has changed from the viewpoint of the state-oriented security concept to the center of the individual and the human community[5]. 3)The emergence of transnational threats as a threat to national security is not a conventional concept of a nationality. Transnational threats are characterized by the fact that the source of the threat is done by non-state actors, while the threats by non-state actors are transcended beyond traditional borders. 4)Finally, each country in the world has reached a state where it cannot guarantee the security of the state from the threat of terrorism.

## **3. Current Proposals for the Protection of Industrial Security Technology**

### **3.1. Balance of protection and utilization of industrial security technology**

It is not an exaggeration to say that it is information that supports human society at the present time, which is aiming at a super connective society beyond information society. Now and in the future, in our human society, information will be the object of protection and utilization because the endless goods will

be created from the information. Industrial security technology, which is a problem in the industrial security field, is also a kind of "information", so the industrial security technology also takes a dual role of protection and utilization[6]. Especially, when the violation of various industrial security technologies is reported, our public opinion cannot deny that there is a tendency to protect the industrial security technology and to punish the violation. However, it is because industrial security technology that can directly affect the national security and putting it as a protection area is afraid that it will make a practical use to overthrow the possibility of improvement and legitimate use. The problem is that it is important to open the area of utilization boldly and set the appropriate level of protection necessary for the area of protection.

### **3.2. Countermeasures against the violation of industrial security technology**

Therefore, it is necessary to secure the effectiveness of criminal punishment in order to protect industrial security technology. In other words, the low sentencing rate of violation of industrial security technology, the generous sentence standard, and the area remaining as legitimate gaps in the current law (eg., detecting and collecting trade secrets, criminal punishment for business secret holders due to leakage of trade secrets) The problem is that it is argued that the criminalization of criminal cases should be strengthened to protect criminal protection against industrial security technology.

However, it is reasonable to argue that public awareness raises public awareness through the reinforcement of criminal punishment for violation of industrial security technology, but theoretical purity is exploited by various legal external factors(eg., political and social factors) you should be aware that there is room. Especially, in reality, when the sentence of sentencing of the court is low, the symbolic upgrade of the statutory form is likely to make our industrial security legislation a symbolic criminal law[7].

### **3.3. Protection of industrial security technologies in criminal proceedings**

In addition, you should be concerned about the inadvertent leakage of industrial security technology from specific criminal procedures. The current Criminal Procedure Act provides the defendants and lawyers with the right to access and read documents related to the documents or evidence kept during the proceeding, as well as the documents kept by the prosecutor after filing the complaint. In other words, it can be said that the right to acquire such rights as defendant's litigation records is in need of inventory because there is a possibility that industrial security technology, which is a problem in specific facts, is exposed again. In addition, defendants are allowed to have access to the trial records. Of course, these regulations are designed to guarantee defendants' right of defense in criminal proceedings, but it is also necessary to consider restrictions on industrial security incidents and furthermore, when considering the application in national security cases. According to the Criminal Procedure Law, the judge may take protective measures to prevent the disclosure of personal information such as the names of persons involved in the case before the reading or copying when there is a possibility that the safety of the victims. It is considered to be a personal information deletion regulation for the protection of victims[8], but it can be used as a reference for preparing special rules of industrial security technology trial.

Furthermore, it is possible to consider the provision of general provisions to restrict disclosure of inappropriate information(eg., sensitive information such as industrial security technologies such as this one as well as personal information of the victim) to the public in the Criminal Procedure Act.

## **4. Current Proposals for the Protection of Industrial Security Technology**

### **4.1. Proposal for proactive prevention of industrial security technology – Institutionalization of information sharing of related organizations**

It will not be enough to stress the competitiveness of the nation as well as the proactive protection of sensitive industrial security technologies that can be directly linked to survival. Therefore, prevention of industrial security infringement is the best way. It is clear that the responsibility of the investigation agencies, including the National Intelligence Service, which is raised in some areas, is strengthened and the creation of a dedicated organization is effective. However, in a comprehensive security situation like now, protection against other objects of "industrial security technology" object cannot be overlooked at all. In other words, it is not necessary to reconsider the necessity of various related organizations' efforts in the present era where various security risk factors exist. In particular, the historical lessons that the greatest reason for preventing the September 11, 2001 terrorist attacks in the past was the lack of information sharing between investigative agencies and intelligence agencies suggests a direction for us[9]. In other words, an organic information sharing system of related organizations related to industrial security technology is needed[9]. The problem is not abstract information sharing and information sharing by human means but institutionalized information sharing plan[10]. Therefore, a detailed information sharing system on the types of information, types of infringement, threats, and threats to be shared by the relevant organizations such as police, prosecutors, national intelligence agencies, patent offices, It is necessary to plan for maintenance by. The abstract information sharing is likely to be a meaningless echo in reality, and the sharing of information by human cooperation also doubts its continuity.

#### **4.2. Enhancement of private sector capacity to protect industrial security technology**

In a comprehensive security situation in which various security threats exist, it is a reality that only national efforts to raise national security and industrial security are limited. Therefore, the capacity of the private sector is also required to correct the limitations of the public sector for enhancing industrial security. To this end, it is possible to

come up with a plan to strengthen the security capability at the company level of the industrial security technology, and it is of course the most reliable liability. However, there is a possibility of complementing these organizational / physical security activities, and this is a private research institute system that has been discussed recently.

A private investigator means a system that investigates cases that have been commissioned by others as a private entity, not a public entity such as police or prosecutors[11]. In Korea, discussions on the introduction of civilian investigators have been conducted mainly by the police, but they have been limited in the factual area of so - However, in countries such as the United States and the United Kingdom, the private investigator system has been used for supplementing the public domain and for research and security activities to meet user needs. In other words, if the results of private investigators in these countries meet certain requirements, they will be provided for the benefit of plaintiffs or defendants at trial, or they will be ordered or delegated by the state agency or hired by government agencies to collect evidence on behalf of the public domain[12].

In addition, although the scope of private investigators in these countries is widely recognized, areas such as coping with industrial espionage, coping with copyright and trademark infringement, and investigating patent rights are also recognized[13]. Therefore, Korea should also carefully examine the introduction of civilian capacity, especially the private research institute system, in response to various industrial security risks in the new security situation.

#### **4.3. Tracking and retrieving leaked information – Focusing on Dark net**

Industrial security technologies may be violated by specific nations, but may also be violated by non-state actors. In particular, infringement by non-state actors can be assumed to be for the purpose of profit-making after infringement, and darknet is the area where such a market is emerging as the dominant market. Darknets are part of a deep web

that is intentionally hidden and cannot be accessed through a common search engine. Darknet not only protects information from unauthorized access, but also encrypts it to prevent random browsing, thus acting as a platform for Internet users who need to be anonymous. Therefore, it is easy to tempt crime because anonymity is essential, and it can be seen as the type of information circulated on the dark net.

In addition, it is not a centralized Internet site such as Naver, Daum, etc., but it is also characterized by the fact that individual actors open and operate individual sites for their purposes in the depths of the deep web. The biggest feature of Darknets is that they are not able to trade in Darknets once they are connected to Darknets, but they are introduced to the other person before the transactions or they check the creditworthiness of them in various ways[14]. In order to connect to such a dark net, special application represented by TOR(The Onion Router) should be installed[15]. It is difficult to keep track of the user's activity because the TOR protects the anonymity of the user[16] by arbitrarily transmitting the Internet Protocol(IP) address[17]. These darknets are inherently a prime example of criminal activity because of the difficulty of the jurisdiction of the state. It is also possible that the leakage of industrial security technology due to these characteristics will become a means of trading. Therefore, it is required that countermeasures against countermeasures against the distribution of industrial security technology in the dark net and how to recover it should be required.

## 5. Conclusion

In the above, I have traditionally looked at the issues to be considered for the protection of industrial security technologies from a criminal law perspective.

Infringement of industrial security technology is a field that can threaten the existence and security of the state as well as impeding national competitiveness, and it is common

to discuss it in the national security area. Furthermore, the threat of national security has diversified, and the effective control over industrial security technology is getting more difficult. Therefore, this study distinguishes two important areas to be considered for protection of industrial security technology.

First of all, although industrial security technology belongs to the field of protection, it is confirmed that unconditional protection is moving toward a hyper connected society, and that there is no reality at the moment. Secondly, it pointed out that criminal punishment is at the forefront of protection of industrial security technology, especially that the creation of new crime should be judiciously cautious. In the concrete criminal procedure, it prevents prevention of intentional leakage of sensitive industrial security technology.

In order to proactively protect the industrial security technology, it is necessary to consider how to institutionalize information sharing among the related organizations involved in the protection of industrial security technology. In addition, the protection of industrial security technology can be limited only by the efforts of the public sector. Therefore, we examined the possibility of utilizing the private investigator. Finally, we assume that the industrial security technology is traded in the dark net, which is newly emerging as a crime market.

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## A Study on the Development of the KOREAN National Police Workers Union from a Criminal LAW Perspective

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### Abstract

*The labor union means a group of workers organized by workers for the purpose of maintaining and improving working conditions and improving their economic and social status. In modern Western countries, the importance of police union organized in the early 20th century is increasing within the police organization and the it also plays a role as a law-protected labor organization. In Korea, however, the government did not approve of the police union. This study examined the three basic labor rights and significance of the government employees' union and the trends of police unions in Germany, the United States, and Japan according to the World Labor Organization standards, and then compared the basic labor rights of Korea police union with them. As a result, the police officer's basic labor rights of Korea police union are not authorized. Therefore, the establishment of Korea police union to obtain basic labor rights of Korea police officers as an employee should be actively considered, also the extent, scope and procedures of allowing Korea police union should be smoothly implemented within the legal system.*

**[Keywords]** Labor Criminal Law, Labor Union, Police Officer, Labor Rights, Public Peculiarity

### 1. Intro

Trade unions mean a group of workers organized by workers for the purpose of maintaining and improving working conditions and improving their economic and social status. It is true, however, that from the past many countries have struck down policy decisions that allow trade unions for civil servants. This is due to concerns about the looting that may result from the strikes of officials of the country's heavy industries. Nonetheless, historically, it has long been possible to allow police unions in foreign countries[1].

Police official union(hereinafter referred to as 'police union') refers to the association of police workers, associations, and groups of police workers, which aims to protect the welfare, interests and rights of police members.

In the modern western countries, the importance of police unions organized in the early 20th century is increasing within the police organization[2].

It is a labor organization guaranteed by law, sitting on the table with the manager and paying the wages of police officers Negotiate from the working environment to the policy-related policy or enforcement[3].

This is a good example of the case in the United Kingdom, the United States and Germany. Unlike in Korea, the United States has police unions in most states, its activities are legalized, and since the 1960s, it has a right to negotiate with police officers to improve the remuneration and welfare of union members. In addition, it can exercise a considerable influence on the policy decision of the police.



In the case of Germany, the unions also include technical workers and daily workers who work in police officers and policemen. The police union (Polizeivereine), which is the roots of police unions, was already established in 1871. It was disbanded under the Nazi regime in 1933, but it was re-launched in 1951 with the opening of the German police officers[4].

In Korea, police unions are not allowed in accordance with Labor Relations Act, Article 33 of the Constitution of the Republic of Korea, and Article 66 of the National Public Service Act. In 2002 and 2003, however, there were attempts to form union officials for some civil servants, and since January 2006, the law on the establishment and management of labor unions has been enforced since January 2006, but the right to organize and collective bargaining has been legally guaranteed. In December 2007, the first public-sector labor-management collective agreement was signed. Police unions were also allowed to be union officials on August 25, 2006. Police offices were set up in the Police Agency, but police officers are still allowed only to skilled workers. Police officers are still not allowed to join police unions[5].

In the case of police officers, there may be a fear that group behavior through civil union unions may cause serious adverse effects compared to other organizations due to the nature of the work that entails responsibility and mandate to the public, but public well-being and well- In order to protect the rights of the police officers, it is necessary to promote the activities of the labor union as well as to carry out the special duties that take the risk of collateral for their lives. Therefore, this study examines the significance of civil unions and police unions, reveals the differences between the US and Germany, which historically allow police officers' unions, and compared it to the case of Japan, And to propose the directions for the development of police labor unions in Korea. In the second chapter, this paper explains the definition of civil servants 'unions and the three labor issues of civil servants as the theoretical background, and the meaning and legal nature of

police officers' unions. In addition, ILO standards for public union unions and Germany, which can be considered as the root of the police union among the foreign countries already working in the police union, the United States which has the reign of the world after World War II, And examined the case of Japan, which had no police union, in terms of labor rights. In Section 3, we compare the cases of Korean police labor unions with those of Korean police unions. Finally, in Chapter 4, we summarize the comparison results so far and present a discussion on the direction of Korean police unions' I will finish.

## **2. Theoretical Background**

### **2.1. Korean police officers' union**

Police officers the function of labor unions is divided into economic and deductive functions and political and social functions in the traditional sense. Today, the functions are being expanded by the necessity to cope with the development of the economy and society. In addition to the function of maintaining and expanding the police organization, the Hyundai police officers' union has the functions of general activities to maintain and improve the working conditions of the front line police, as well as educational activities, propaganda activities, research and research activities, It also contributes greatly to the recognition of the importance of the police organization[6].

As we have seen in the significance of the preceding labor groups, labor organizations can be divided into general groups and labor groups(meeting the standards of labor unions), and police organizations can be distinguished as well.

First of all, there are police officers 'labor organizations and other employees' organizations in the labor organization of the police. In some cases, the two organizations are interpreted in the same sense, but this is basically different from the legal nature. Employee organization refers to any organization in which police officers are admitted as police officers, including social groups and charitable groups whose main activities are

entertainment and community service. Labor unions cannot act individually, ignoring the rules of the organization, unlike other employer organizations, because they are contracted legally with the employer or maintain other formal implications. Therefore, the employee organization is a voluntary group in that the individual is given the freedom of participation, and the police officer labor organization is a special form of the employee organization.

Police officers organization is a group of police officers who work for the purpose of maintaining and improving working conditions and improving the economic and social status of police officers, it can be said that it is a group that has all the formal and practical requirements stipulated by the law related to the union. It is also aimed at enhancing the morale and improving administrative efficiency and administrative efficiency by promoting the sense of solidarity and peerage of police officers, improving working conditions and status, and promoting welfare. In addition, economic factors, as well as wages, pensions, life allowances. Unfair procedures, recruitment criteria, appointment, discipline, promotion. Dismissal, improves work efficiency, and negotiates with the user in the procedural rights of the police officers, thereby contributing to the overall working environment[7].

However, in terms of the police union, the basic rights of the police are divided into the right to organize, collective bargaining and collective action. In order to prevent labor exploitation from employers, the labor union of the private enterprise conducts collective bargaining with employers' employers in order to improve wages, working conditions and socio-economic status based on the unity of the workers themselves, and the user side commits the job closure in response to this. However, police unions are somewhat limited when compared with private unions in their activities because of their special status. The wages of private enterprises are fixed by the employer but the wages of the police are covered by the taxes of the people. Therefore, there is a limit to the increase of wages and the like. If collective bargaining is broken, In

addition, there is a limit to the collective action rights of police unions in each country. Therefore, even if the right to collective action is limited, it is also possible to recognize the unions and increase their free decision-making and participation opportunities for the police, which is a problem that can be considered in terms of morale of the subordinate police and also has a close relation with the general work problem of the police. In addition, police officers' labor unions can carry out self-help and continuous activities in order to secure the position of the police as an abbreviated person based on the strength of the organization and to provide a comparable relationship with the user country.

## **2.2. Foreign police officers' union**

### **2.2.1. Police officers union in German**

Polizeiverein, the roots of the police union, was born in 1871 during the German empire and was demolished and transformed. In 1951, it was relaunched as the 'German police officers' association. In 1966, and the role of the German police union was great on the back of the establishment of the personnel, remuneration and working conditions of the German police.

In Germany, there are no legal restrictions on the organizational forms of private and public sector unions, so public sector workers organize trade unions with their own or private sector workers. The members of the police union to collectively solve the working conditions of the police officers and the welfare and welfare problems include the functional and daily workers who work in police officers and police officers.

The fundamental rights of the police are defined in Article 9, Paragraph 3 of the Basic Law of Germany, which states that "the right to form an unity for the maintenance and improvement of working conditions and economic conditions is guaranteed to any person and to any profession, Is invalid, and the measures for this purpose are illegal." In addition, Article 91(1) of the Federal Civil Service Act stipulates that "civil servants have the right to form trade unions or functional

organizations under the freedom of association." In addition, Article 2 of the same article states that "civil servants are guaranteed unity by stating that they are not disciplined or disadvantaged for their activities because of their activities." Therefore, unlike in Korea, there are many high-ranking officials in the labor union, such as soldiers and ministers[8].

### **2.2.2. Police officers union in U.S**

After the World War 2, the U.S, which has taken over the hegemony of the world from the Great Britain to the present day, has become legally recognized in most of the country. In the United States, public officials are divided into federal government officials and state and local government officials. Police officers are also divided into federal police and state and local police. The Civil Service Reform Act of 1978 was applied to federal police officers, individual public labor relations laws were applied to state and local police officers, and US police officially legalized police labor unions.

In the United States, in many autonomous police stations, the union is required to represent all police officers except police officers. In addition, many police unions are excluded from the union because the deputy director of the police department acts as an administrator to represent all the police officers below the captain. On the other hand, in many large-scale police stations, there are many police unions, such as police union and union labor union. In this case, the police chief must engage in collective bargaining with each union and, in some cases, negotiate collective bargaining with three police unions. An important issue for the US police union is which issues should be negotiated. Basically, there are three categories of collective bargaining. First, there is a mandatory bargaining target, which includes salary, supplementary benefits(pension, vacation, insurance, etc.), daily working hours per week, and overtime pay. Second, there is an exclusion of negotiations on the part of management that is not subject to collective bargaining. This includes what are called so-called management rights such as appointment of workers, job assignment,

telegrams, and promotion. Third, there is arbitrary negotiation. Both sides may or may not negotiate arbitrary negotiations. The only way for American police to carry their arguments is collective bargaining.

### **2.2.3. Police officers union in Japan**

Japan is located in close proximity to Korea and has had a considerable impact on Korean police change in the process of colonizing Korea. The Japanese police are differentiated into the National Police Agency and the Prefectural Police, which are autonomous police, and the National Public Service Law and Local Public Service Law are applied respectively. According to the ruling of the Supreme Court of Japan, public officials are generally included in the scope of Article 28 of the Constitution as "workers", and three books of labor are guaranteed in principle. Therefore, public officials are supposed to be guaranteed constitutional rights on the right to conduct collective action other than collective bargaining and collective bargaining. The guarantee of rights generally means to protect the rights from infringement and to maintain a certain degree, and since the guarantee of the right to organize, collective bargaining and collective action is interpreted in the same sense, the public servants are guaranteed constitutional guarantee It means that the Constitution protects and protects the three books of civil servants from invasion. Therefore, police officers, who are public officials or local public officials, theoretically belong to workers under Article 28 of the Constitution. However, even if the police officers are the workers under Article 28 of the Constitution and 3 labor rights are recognized, the labor rights of the police officers in the current law are limited. Article 1108-2(5) of the Japanese National Civil Servants Act states that "a police officer or an officer working at a maritime security office or in a prison is for the purpose of maintaining and improving the working conditions of an employee, and in addition, "Article 98(2) of the Act stipulates that" employees shall not engage in strike, sabotage, or other action against the public as a user represented by the government. This means that the police

officers belonging to the national public officials are restricted in the scope of the human application of Article 28 of the Constitution which guarantees 3 labor rights, and the police officers belonging to the local public servants are also subject to Article 372 the same three books are restricted. As mentioned above, Japanese police officers can guarantee the three books of Article 28 of the Constitution in principle, but this is limited by the provisions of the law, and these laws are interpreted as constitutional ones in which rational reasons exist. However, it is pointed out that it is a problem to obtain the grounds for judging such reasonable limitation from 'public welfare' or 'common interest of the whole people'.

In the case of Japan, Korea and the police organization system and the legal system are relatively similar and there is room for comparative argument. However, in order to guarantee the basic rights of the police officers, the police officer's position, maintenance and livelihood, etc.

### **3. Comparison of Korean Police Officers' Trade Unions with Foreign Countries**

In this chapter, firstly, the cases of the United States and Germany, which recognize the activities of the police labor union centered on the application of the ILO standards to police unions and basic labor rights, and the case of Japan, which does not allow police union activities, respectively.

In Korea, except for some "civil servants who are engaged in labor" through amendment of Labor Relations Act and National Public Officials Act in 1963, civil servants including police officers are divided into experienced civil servants and special experienced civil servants. Firefighting, education, etc., and the special-experienced civil servants are divided into civil servants, separate employees, contract workers, and civil servants.

As well as the formation of labor unions of general public officials. However, after the democratization, the demands of the labor

system to guarantee basic labor rights for public employees have been strengthened. In December 1991, the ILO joined the OECD in December of 1996, We have put pressure on the labor sector.

Therefore, the National Police Agency's union started as a work council in 2002, but its activities were not recognized. In 2004, it recognized its activities. In August 2006, it was officially launched as a police union, and in September 2006, the union began its activities. However, this police union is not a police officer organization because it is organized as a general officer and a functional civil servant belonging to the police agency, not a police officer. The police officers' labor union in Korea is composed of the general office of the police agency, the administrative union police station branch, it is composed of the contractors 'police officers, the police officers' unions, and the national police union promotion committees, which have been established but have not been established yet. However, there are many who do not even know whether there are police unions[9].

The trends of advanced countries in labor groups have implications for Korea, which has not yet allowed police unions.

In Germany, public sector workers organize their own trade unions or trade unions with private sector workers. The members of the labor union include the police officers and the technical and daily workers of the front office, and have the right to organize to solve the working conditions of the police officers and the welfare and welfare problems collectively. However, it does not guarantee the right to conclude collective agreements and strikes, except that it recognizes the right to organize instead of the right to conclude collective agreements.

In the case of the United States, a large number of self-governing police agencies organize labor unions and therefore have the right to organize. In the case of large-scale police departments, many police unions are organized and operated. It also has collective bargaining rights for remuneration, working hours, excess allowances and management rights.

On the other hand, in Japan, police officers are legally specified as workers under Article 28 of the Constitution, but the law restricts the right to work for police officers.

On the positive side, in the United States and other countries, the police union was in the form of an employee organization before it was recognized as a law by the law, and this organization mainly started as a combination for the welfare and welfare of police officers. Since then, basic labor rights have been emphasized, and the establishment of a labor organization that was not recognized due to the special status of public servants has been recognized. As a result, these employee organizations have developed into law-protected, recognized labor organizations and are organized. These police officers' trade unions, like Germany, work independently or jointly with other functional groups or affiliated with higher level groups, and they have improved the welfare problems of police officers such as wages and working environment. It was also a way to utilize the knowledge and information of the police officers by influencing the policy decision process or the execution process. In addition, it has also been functioning to monitor the corruption of high-ranking police officers by forming appropriate containment relationships with high-ranking police officers. It also provides direct and indirect support such as legal assistance and consultation to unjustly disciplined police officers. It also represents profits[10].

In the case of Japan, however, basic labor rights are recognized similar to those of Korea. However, the law restricts the activities of police officers' unions and guarantees the status of police officers, the union is denied by the 'target action theory'.

Most of the countries recognize the right to organize and collective bargaining and do not recognize collective action rights. This is interpreted as police strike demanding public sacrifice.

#### 4. Conclusion and Discussion

Until now, the meaning of the labor union

of the police officers and the legal nature of the police officers' labor unions in the meaning of the labor unions of the labor unions, and the significance of the labor unions of the civil servants, And analyzed the implications of this comparison in comparison with the case of Korea.

As a result, most of the countries recognized labor rights except collective action rights. Korea and Japan did not recognize the labor rights of police labor unions as exception. In many countries, police's right to collective action is construed to be due to concerns over labor disputes.

In ILO, the labor organization of general civil servants should be acknowledged, but it is mandatory for the labor organizations to recognize the special public servants such as the police. Accordingly, the United States, Germany, and other countries acknowledged that the activities of police officers' labor groups were protected by law and their rights were protected. In addition, police officers' labor unions have shown considerable influence in the decision-making and enforcement of police-related policies as well as welfare benefits such as the improvement of wages and working conditions of individual police officers[11].

However, in neighboring country Japan, the importance of police duty as a civil servant was emphasized in the same way as Korea, and individual police activities were not allowed. In principle, police officers are prohibited from union activities in Korea and only exceptionally allow civil servants who are engaged in labor.

Police are different from general administrative organizations in that they can exercise power. Police officers are categorized as experienced civil servants. Unlike general and functional workers, police officers are classified as specific. Police are especially dangerous and powerful, and have strong political and conservative power.

On the other hand, the police work is about the basic matters for the existence of the national and the people's lives. The police function is to force the people to order and force

them to maintain the public well-being and order. Therefore, it is directly related to human rights, so it can be said that it is the administrative organization closest to the people. In addition, the role of the police is increasing more and more today as the roles of the home and community, which are the informal control measures to maintain social order, are gradually weakened. Thus, police work is an important public service that has a lasting character.

In addition, the police are responsible for the protection of people's lives and property and for the prevention of crime, mainly for the protection of social disasters, risks and weaknesses. It has a very high occupational risk. Police officers are living in a harsh situation where they have to work continuously for 24 hours due to the existing crime prevention, demonstration suppression, traffic communication, and life and physical dangers. They are always in psychological tension, since the main task is to remove the police themselves, they are also vulnerable to such risks. Therefore, the police union can function to maintain and expand the police organization and to improve the working conditions of the line officers. In addition, the importance of the police organization through education, propaganda, research, it may also contribute to recognition. Line officers can exercise their right to speak on unfair personnel actions through unions and can be considered in terms of fraud as well as obtaining free personnel decisions and opportunities for participation. It may also play a role as a pressure group for the police administrator for police specialization and social well-being[12].

On the other hand, it is also true that when the police union is allowed, it maybe a profit grouping rather than a service to the people and the state. If the union strikes and acts as a group other than the justice struggle, Which may threaten the safety of citizens[7].

Police are generally semi-military organizations that make up the pyramid structure of chiefs and subordinates. They are the organization of the subordinates. When the unions are formed, the hierarchical order within the

organization collapses and the authority of the managerial level is weakened. There is also the argument that if the demand for more than the required level is constantly increased, the tax burden of the people will increase in terms of cost. Therefore, it is desirable to discuss the establishment of a police labor union that understands the innate ability and dysfunction of the union and includes the line officer in the scope of participation, on the precondition that the police officers' basic labor rights are guaranteed.

Even considering the public peculiarities, the establishment of unions should be considered actively for the basic rights as workers. As it is a group of public servants who require high level of compliance due to differences with other groups, So that it can be done smoothly within the legal system.

Prior to forming the police union, the police officers recognized the existence of various perspectives and emotions regarding the formation of the police union and gathered a lot of opinions so that the public consensus could be drawn up. We should also suggest ways to reach a positive conclusion about the rights, obligations and scope of responsibility. Furthermore, if unions are formed, they should continue to actively engage and participate in union activities and activities. It is also necessary to create an organizational quorum that allows free choice in joining and leaving of trade unions[13].

In terms of managerial level, it is necessary to understand that police union can supplement management activities and take a positive attitude toward union activities so that this can be used creatively in administration. In addition, rather than confronting union activities with managerial positions, it should be an opportunity to improve the efficiency of the organization through mutual cooperation.

In order to ensure that police unions are formed and act constructively, it is necessary to establish conditions to support them in the administrative system. In this regard, it is necessary to establish labor unions based on international legislation and international la-

bor standards, it shall examine and make legislation as much as possible to ensure the fundamental rights of workers to work.

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## Scope of the KOREAN School Violence Prevention LAW

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### Abstract

*In Korea, suicide was caused by school violence and it became a social problem. The school violence prevention law was enacted to allow students to take action on school violence victims, protect students from harm, and resolve disputes between them. The existing system of school violence was able to regulate school violence, but the Act on the Prevention of School Violence was enacted to more effectively protect the victims and prevent school violence. According to the Act on the Prevention of School Violence, each school has its own organization called the Autonomy Committee. Self-governing committees usually conduct school violence prevention activities. In the event of school violence, students should take a neutral standpoint and take initiative measures, protect victims, and make dispute resolution. This is an institution to resolve school violence on its own within the school. However, school violence is a criminal offense, and there is controversy over handling school violence within the school. Especially, there is controversy about the scope of the school violence prevention law.*

*In this paper, the main contents of the school violence prevention law are reviewed and the scope of the school violence prevention law is clarified as follows.*

*First, it is the coverage area. According to the School Violence Prevention Act, school violence is violence in and out of school. In other words, it is because school violence can occur not only in the educational activities outside the school but also on the way to and from school. Therefore, it is necessary to interpret it widely based on the relation with the school.*

*Second, it is human scope. The School Violence Prevention Act stipulates that school violence is a "student-directed" act. If the victim is a student, the law must apply regardless of whether the perpetrator is a student or not.*

*Third, it is the action to be applied. In the school violence prevention law, school violence uses the notion of criminal law, such as injury and assault, and it should be interpreted independently in judging it, but it should be interpreted same as the concept of criminal law to prevent unified interpretation and confusion.*

**[Keywords]** *School Violence, School Violence Prevention Law, Protection Measure, Self-Government Committee, Leading Measure*

## 1. Introduction

In Korea, in the 2000s, suicide due to school violence became a social problem. School violence is an act of violence that causes mental and physical harm to a student or takes property, such as assault, injury, incarceration, incentive, insults, etc., between students[1].

Therefore, the government tried to provide measures for eradicating school violence. As part of the measures, the "School Violence Prevention and Countermeasures Act"(hereinafter referred to as the "School Violence Prevention Act") was enacted in January 2004[2].



Even before the Act on the Prevention of School Violence was enacted, there was no legal process for solving problems caused by school violence. Disciplinary measures under the Elementary and Secondary Education Act were possible for students who were subjected to school violence and criminal punishment was possible under the Juvenile Act and the Criminal Law. The problem of damages for victims was also made possible by civil law. Despite these measures, the School Violence Prevention Act was prepared so that school violence could lead to serious social problems, leading to student action, protection measures for victims, and adjustment of disputes between victims and victims. In this paper, we review the history and main contents of the School Violence Prevention Act in Korea and clarify the scope of application of the Act.

## **2. School Violence Prevention Law in Korea**

### **2.1. History**

#### **2.1.1. Enactment**

The School Violence Prevention Act was enacted on January 29, 2004 and took effect on July 30 of the same year. The same Act provided the establishment of a specialized body to effectively deal with the problem of school violence, regular school violence prevention education, protection of school violence victims, and education of perpetrators.

#### **2.1.2. Revision**

As of June 2018, the Act has been amended 22 times since it was enacted. Amendments to the contents of the amendment were made 13 times and nine amendments were due to revisions to other laws. The feature of the amendment of the law is to gradually expand the scope of school violence and to strengthen the protection of victims.

### **2.2. Main content**

#### **2.2.1. School violence procedures**

School violence prevention procedures under the School Violence Prevention Act are

designed to determine the measures to be taken against victims and students who have been subjected to the deliberation process by holding initial response and case investigation stages and self-governing committees Step, and the decision of the self-governing committee, the principal shall proceed to the step of notifying and implementing the victim and the offending student[3].

#### **2.2.2. School violence measures autonomy committee**

The School Violence Measures Committee(hereinafter referred to as the "Autonomous Commission") shall be established for each school in order to consider matters related to prevention and countermeasures against school violence. The self-governing committee usually establishes preventive measures for school violence, protects victims in the event of school violence, leads the victimized students, and coordinates disputes between victims and students. As such, the Autonomous Commission is a key organization that is involved in everything from preventing school violence to decision-making. However, it is pointed out that the autonomous committee established at all elementary, middle and high schools across the country is hardly realistic to appoint experts with knowledge to prevent school violence, and there is a considerable gap between the reality of the unit schools[4].

#### **2.2.3. Leading measure for perpetrated student**

The autonomous committee shall be responsible for: i)a written apology; ii)a prohibition of contact, intimidation and retaliation against the student and the complainant or complainant; and iii) IV)community service, v )special education by the experts in and outside the school, iv)suspension of attendance, vii class change, viii transfer, ix)expulsion. The autonomous committee shall give the school principal an opportunity to give opinions to the student and his / her guardian before making any request for such action.

#### **2.2.4. Protection measure for victim**

The autonomous committee shall be responsible for the protection of the victim if: i)psychological counseling and counseling by experts within and outside of the school, ii)temporary protection, iii)treatment for treatment and treatment, iv)class replacement, and v)You may ask the head of the school for necessary measures to protect you. The Self-Government Committee shall grant the victim and his / her guardian an opportunity to express their opinion before requesting such action. If the student with a disability is a victim, the self-governing body may ask the principal for counseling by a specialist counselor with disabilities or medical treatment of a special treatment institution for persons with disabilities.

#### **2.2.5. Dispute settlement between injured and harmed students**

The autonomous committee shall, within one month, arrange for the settlement of any dispute related to school violence, including: i)settlement of the settlement of damages between the victim and the student or his / her guardian, and ii)can do. When the Self-Government Committee intends to make a dispute settlement, it should notify the student, the student and his / her guardian. This adjustment is not mandatory[5].

### **3. Scope of School Violence Prevention Law**

#### **3.1. Locational scope**

School violence is violence in and out of school[6]. In this law, the scope of place is not limited to 'school' but broadly defined as violence is occurring not only at school but also at places other than school such as school, school road, retreat, experiential learning, will be. There is also an opinion that the 'outside school' should be limited to the area close to the school or to the general activities of the school[7].

However, if the intention of this law is to protect the student against the violence against the student, you do not have to. Therefore, in order to judge the scope outside the school, it is necessary not to access

the spatial concept of school as educational facility, but to protect the victimized student by broadly interpreting the school violence behavior in relation to school life[8].

#### **3.2. Human application scope**

The Act on the Prevention of School Violence revised the scope of human violence for school violence from 'between students' to 'for students'. This is to protect students who are victims of violence by means of school violence when victims are targeted at students. If the perpetrator is a student and the victim is not a student, then Article 5(1) of the School Violence Prevention Act stipulates that" the violation of school violence, the protection of the victimized student, This law is applied except that there are special regulations. "There is also opinion that it is reasonable to apply this law. However, if this view is followed, the scope of school violence will be widened excessively, which may detract from the effectiveness of this law[9].

For example, if the perpetrator is a student, if this law is applied, school violence, such as when a student assaulted a teacher, is also school violence. Therefore, if the perpetrator is a student and the victim is not a student, it may be solved by disciplinary action under the elementary and junior high school education law, juvenile law, criminal law, and civil law.

#### **3.3. Applicable actions**

School violence under the School Violence Prevention Law is defined as "the violation of the school violence, which is defined as" the violation of the law, such as injury, assault, detention, intimidation, harassment, attraction, defamation, insult, intimidation, enforced errand and sexual abuse, Or violent information by means of using the body, mind or property accompanied by damage to the refers to. "Bullying" refers to any act that causes two or more students to feel pain on the other side of the school by constantly or repeatedly physically or psychologically attacking a specific person or a group of students. The "cyber bullying" Using information and communication devices such as the Internet and mobile phones, students conduct all

kinds of acts that cause students to constantly and repeatedly make a psychological attack on certain students, or to spread personal information or false information related to a particular student, It says. The School Violence Prevention Act defines school violence and uses the same terms as the constitutional requirements of the law such as injury, assault, detention, intimidation, abduction, incentive, defamation, insult, intimidation and sexual violence. There is controversy as to whether the concepts of requirements are the same.

In this regard, the School Violence Prevention Act has an educational purpose of legislative purposes and the measures against the perpetrators are judged separately from the requirements for the establishment of crimes under penal law in the sense of non-judicial proceedings[10]. In principle, And the concept of school violence prevention should be interpreted in consideration of the entire legal system in the criminal law and the special law on criminal law, There is a view. These two views are different only in terms of expression, but basically we try to grasp the concept of school violence independently according to purpose and purpose of school violence prevention law.

However, even if one considers the purpose of the school violence prevention law to consider the protection and education aspects of the student, it is confusing to use the same concept in criminal law and to grasp the meaning independently[11].

School violence is largely a criminal offense, and criminal penalties and school violence prevention measures are not double punishments. However, using the same terms and understanding them in different meanings may cause the two to make different judgments, and it is not possible to predict the students because they are not clear about what is prohibited[12].

However, in the case of bullying and cyber bullying which are not criminal concept, it is necessary to take a more active protection measure by broadly interpreting it from the viewpoint of the victim student.

#### 4. Conclusion

In this paper, we reviewed the main contents of the school violence prevention law in Korea and its scope of application. In Korea, in 2000s, suicide by school violence occurred several times and became a big problem in society. In order to prevent school violence more effectively, the School Violence Prevention Act was enacted. Since then, the scope of school violence has been enlarged and revisions have been made to strengthen victims' protection measures.

According to the School Violence Prevention Act, when school violence occurs, it investigates the incident in the school and urgently takes action. And the autonomous committee is opened to decide the measures for the victim and the student. According to the decision of the Self-Governing Board, the principal shall notify the student and the students who have been affected. An unfair party may disagree. Thus, in the case of school violence in Korea, measures are taken in accordance with the School Violence Prevention Act rather than first by the criminal justice agencies. Of course, measures taken by criminal justice agencies are not exempted. This is a solution for solving the problem within the school rather than stigmatizing the student first. As such, the Act on the Prevention of School Violence is designed to resolve school violence on its own and effectively prevent it, but its scope is controversial. In this paper, the scope of the school violence prevention is clarified as follows[13].

First, it is the coverage area. According to the School Violence Prevention Act, school violence is violence in and out of school. In other words, it is because school violence can occur not only in the educational activities outside the school but also on the way to and from school. Therefore, it is necessary to interpret it widely based on the relation with the school.

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