

Juvenile Criminal Responsibility and Punishment in Japan

Katsunori Kai

1. Introduction

On 18-19th April 2009, the First Workshop on CONTEMPORARY ASPECTS OF YOUTH CRIMINALITY was held running parallel with the Fourth Japanese-French Symposium on Bioethics and Ethics of Science in Fukuoka, Seinangakuin University. Also this workshop was jointly sponsored by International Association of Law, Ethics and Science, International College of Law and Mental Health, Seinangakuin University and Waseda University. I attended both meetings and reported on “Juvenile Criminal Responsibility and Punishment in Japan”, and “Legal Approach to Nanotechnologies in Japan”. Especially in the workshop on youth criminality, I played the role of organizer, and consequently this workshop was successful because we could discuss eagerly and fruitfully contemporary aspects of youth criminality from the various viewpoints between Japan and France (partially including Canada). First of all, I must thank for all participants in this Workshop. The Program was following.

18th April 2009

9.30 am Official opening

Mrs Nathalie Auvray, Home Security Adviser, French embassy, Tokyo

Prof Toru Kitagaki, Seinangakuin University

Dr Marie-Rose Richardson, Chair, International College of Law and Mental Health

NB: Prof Georges Mousourakis, Faculty of Law, The University of Auckland; special guest and discussant in all sessions.

10 am

1st Round-table co-chairs: Prof. K. Kai, Judge H. Hamon

PSYCHIATRY, LAW AND YOUTH CRIMINALITY: comparative

approaches

-Dr Michel Botbol, psychiatrist, Ministry of Justice, Directorate for the judicial protection of the youth; What to do with violent Adolescents? – Contribution of the Psychopathological point of view to the current adaptation of the French Juvenile Justice System

-Prof. Med. Dr. Naotaka Shinfuku, Seinangakuin University, Faculty of Human Sciences,; Bio-Psycho-Social Perspectives of Juvenile Crime in Contemporary Japan

12.30-14.00 Lunch

14.00 pm

2nd Round-table co-chairs: Prof. N. Yoshinaka, Mrs C. Maisse
THE CONTEMPORARY SOCIAL PERCEPTION OF YOUTH CRIMINALITY

-Luc- Henry Choquet, sociologist, Ministry of Justice, Directorate for the judicial protection of the youth and EHESS Paris

- Associate Prof. Yukio Okada , Kumamoto University, Faculty of Law, Kumamoto; The Current Situation of Juvenile Delinquency and the Juvenile Law

-Ms André-Yanne Parent, anthropologist, University of Montreal

16.00 pm

3rd Round-table co-chairs: Prof. N. Yoshinaka, Mrs C. Maiss
YOUTH CRIMINALITY AND THE FAMILY ENVIRONMENT

- Associate Prof. Shihoko Oyabu (Kurume University, Faculty of Law, Fukuoka; Measures to Juvenile Drug Abuser

-Dr Marie-Rose Richardson, Family psychotherapist, Chair, International College of Law and Mental Health, University Pairs VIII;

19th April 2009

9.00 am

4th Round-table co-chairs: Prof. T. Kitagaki, Mr Luc- Henry Chouquet

THE EVOLUTION OF THE CONCEPT OF PENAL MINORITY

-Mrs Catherine Maisse, Barrister at law, Paris Bar Association; The Evolution of the Penal Minority Concept in French Law

-Prof Katsunori Kai, Waseda University, Law School, Tokyo; Juvenile Criminal Responsibility and Punishments in Japan

-Judge Christian Byk, Court of appeal, Paris; Youth criminality, Educational measures and Genetic Data: the Resistance of the Supreme Court?

10.30 am

5th Round-table co-chairs: Prof. T. Kitagaki, Mr Luc- Henry Chouquet

CONTEMPORARY TENDENCIES IN JUDICIAL POLICY

-Judge Hervé Hamon, President, Juvenile Court, Paris

-Prof. Nobuhito Yoshinaka, Hiroshima University, Faculty of Law, Hiroshima; Recent Changes in Youth Justice in Japan: Towards Restorative Youth Justice

-Associate Prof. Sawako Hirai (Seinangakuin University, Faculty of Law, Fukuoka;

Current Problems of Commercial Sexual Exploitation of Children (CSEC)

12.30 pm Closing remarks

In this paper, I describe my opinion on juvenile criminal responsibility and punishment in Japan, which I presented in the above workshop, from the viewpoint of criminal law theory. Firstly I discuss the current situations of juvenile delinquency, secondly the current legal system to juvenile delinquency, and lastly juvenile criminal responsibility and punishment.

2. Current Situations of Juvenile Delinquency in Japan

Now in Japan, many people are interested in juvenile crimes and seriously pay attention to them. The reason is that some shocking crimes by minors have occurred although the number of juvenile crimes has

decreased for the last ten years.

E. g. in Fukuoka, the Bus-hijacking case had occurred in 2000, where a boy (17 years old) had hijacked a bus here Fukuoka and then made the busdriver drive to Hiroshima on the motorway with hostages. On the motorway, he killed and inflicted injury on some of these hostages. In this case, the main issue was whether he was insanity or not.

Anyway, this case or other cases lead several times amendments of the Japanese Juvenile Law. The Japanese Juvenile Law has been revised three times for ten years (2000, 2007, 2008). Especially since the first amendment in 2000, punishment for juveniles has been widened and got more severe as a result of consideration of the feeling of victims. At the same time, the role of public prosecutor and criminal court becomes more strongly than that of the family court.

Here, however, we must consider; what is the essence of juvenile criminal responsibility? Is it the same content or not in comparison with the adult criminal responsibility?

3. Current Legal System on Juvenile Delinquency in Japan

Juvenile delinquency includes juvenile offense and juvenile illegal behavior (under 14 years of age) in Japan. And though, according to the Japanese Criminal Code, we can impose punishment on offenders 14 years old and over (Article 40 of Criminal Code), the Japanese Juvenile Law could formerly impose punishment on only juveniles 16 years old and over due to criminal politics. If the offender was a minor 14 or 15 years old, he or she was not convicted but was placed under the supervision of a juvenile probation offender. Now, however, also minors from 14 to 16 years old can be punished as an offender by criminal courts in certain cases.

The question is in that the concept of “Sekinin” has various meanings in Japanese; responsibility, liability, duty, and obligation. Of course, I use here it as criminal responsibility. In spite of it, we must consider the essence of juvenile own criminal responsibility, because minors have some characteristic nature even if he or she commits his or her crime due to plasticity.

4. Juvenile Criminal Responsibility and Punishment in Japan

I think that minor has his or her own responsibility different from adult's one¹. What is then the difference between adult and minor (especially middle teenagers) on criminal responsibility?

In juvenile cases, mature or maturity is a very important factor. If he or she is unmatured in decision, his or her conduct can be judged as a result of major external factors (e. g. conflicts or compulsion in case of juvenile, impulsive complicity conducts by stumbling). Now, however, we must rethink the essence of criminal responsibility and the idea of the Juvenile Law (protection of youth, educational consideration).

Generally speaking, in Japan, an offense consists of "Tatbestandmäßigkeit" (type of conduct), "Rechtswidrigkeit" (unlawfulness) and "Schuld" (responsibility), which are like as in Germany, because the Japanese criminal law system has derived from Germany.

Nulla poena sine culpa (No penalty without responsibility) is a very important and fundamental principle ("Schuldprinzip"). It is true that as objective factors, "Tatbestand" and "Rechtswidrigkeit" are common to adult and minor, but I think that the assessment of "Schuld" as the assumption of punishment is something different between adult and minor (especially middle teenagers).

Concerning criminal responsibility in Japan, we have the concept of "Schuld" and "Verantwortlichkeit" following the German criminal law doctrine. "Schuld" means atonement for his or her crime based on culpability, and includes an implication of review², while "Verantwortlichkeit" mainly

¹ Toshiaki Shiomori, Criminal Responsibility and Verantwortlichkeit. Crossover Criminal Law and Juvenile Criminal Law in Germany (in Japanese), HIROSHIMA HOGAKU (The Hiroshima Law Journal) Vol. 30. No. 1 (2006), p. 157ff. Incidentally, I owe my opinion to the daily discussion with Prof. Nobuhito Yoshinaka (Hiroshima University). See also Nobuhito Yoshinaka, Recent Changes in Youth Justice in Japan (in English), HIROSHIMA HOGAKU vol. 33 No. 4 (2010), pp. 15-20. This article is based on the presentation which has been reported in our Workshop on CONTEMPORARY ASPECT OF YOUTH CRIMINALITY in Fukuoka, 2009.

² See Arthur Kaufmann, *Das Schuldprinzip. Eine strafrechtlich-rechtphilosophische Untersuchung*. 2. Aufl. 1976. This book has been translated into Japanese by me in 2000 (Kyushu University Press).

means preventive implication to his or her crime³.

In my opinion, in case of adult, criminal responsibility means “Schuld”, not “Verantwortlichkeit”. And, in case of matured minor, criminal responsibility means “Verantwortlichkeit” following Shiomori’s theory⁴.

Furthermore, in case of unmatured minor, we cannot punish him or her due to his or her immaturity. He or she should have a chance to accept an educational correction in a reformatory by support of society.

By this way, the youth will be able to resume his or her place in society, and we can realize restorative justice in juvenile criminal justice. The problem is how to judge grade of “maturity”. We can, however, judge it by getting cooperation with psychiatrists⁵.

5. Conclusion

I think that severe punishment to juvenile crimes is not so good in Japan. We should rethink about this problem with psychiatrists, sociologist and correctional institutions, and now make a new criminal policy. And on that occasion, we should learn it from the French legal system of this field from the viewpoint of comparative law to realize it.

³ See Claus Roxin, „Schuld” und „Verantwortlichkeit” als strafrechtliche Systemkategorien. Grundfragen der gesamten Strafrechtswissenschaft; Festschrift für Heinrich Henkel zum 70. Geburtstag, 1974, S. 171ff. This article has been translated into Japanese by Prof. Norio Takahashi in 1984 (Seibundo Press).

⁴ See Shiomori, *supra* note (1), p. 176ff.

⁵ As recent article to this point, see Hitoshi Saeki, Criminal Responsibility in Juvenile Law. In *Focusing on the Discussions in USA*, in Yoji Nakatani (Ed.), *Psychiatry and Law* (in Japanese). 2008 (Kobundo Press), p. 63ff.; Masao Maruyama, Probation and Requirement of Responsibility in Juvenile Law, in Nakatani (Ed.), *supra*, p. 85ff.; Tokikazu Konishi, “Juvenile Delinquent” and Criminal Responsibility (1) (2) (in Japanese), *The Waseda Law Review*, Vol. 85 (2010), No. 2, p. 51ff., Vol. 85 (2010), No. 4, p. 1ff.