

Determination of Schools' Responsibility in School Accidents

From the Prospective of Comparative Law Between Chinese Law and Korean Law

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Abstract—School accidents become a common problem around the world. Due to the increasing number of school accidents, governments around the world have all made efforts to prevent them by enacting a large number of laws and rules. Among the solutions, some countries treat schools as civil subjects when considering the school accidents, like China; South Korea set a system similar to a social relief. This paper is going to discuss the methods of both of two countries to solve the school-accident problem by comparing the source of laws, defining the relationship between school and students and summarizing the disadvantages of both sides.

Keywords—component; formatting; style; styling; insert

I. INTRODUCTION

The increase of school accidents has become a common trend not only in Korea but also in China. In Korea, the number of school accidents increased 67.7% from 2008 to 2013, and similar situation exists in China.

Generally speaking, Korean system is better than Chinese one. And in order to make a good compare, this article will introduce Chinese system first.

II. SCHOOL ACCIDENTS IN CHINA

In China, there are three most important articles from Tort Law to solve such issue — Article 38, 39, and 40¹,

¹ "Article 38 Where a person without civil conduct capacity sustains any personal injury during the period of studying or living in a kindergarten, school or any other educational institution, the kindergarten, school or other educational institution shall be liable unless it can prove that it has fulfilled its duties of education and management.(Principle of fault presumption)

Article 39 Where a person with limited civil conduct capacity sustains any personal injury during the period of studying or living in a school or any other educational institution, the school or other educational institution shall be liable if failing to fulfill its duties of education and management. (Principle of fault liability)

Article 40 Where, during the period of studying or living in a kindergarten, a school or any other educational institution, a person without civil conduct capacity or with limited civil conduct capacity sustains any personal injury caused by any person other than those of the kindergarten, school or other education institution, the person causing the harm shall assume the tort liability; and the kindergarten, school or other educational institution shall assume the corresponding complementary liability if failing to fulfill its

which means China tries to solve school accident problems mainly based on civil law. One of the significant features of civil law must be its age ranges of civil subjects. And in Chinese case, if the subjects are kids younger than 8 years old (a person without civil conduct capacity) who got hurt in the school accidents, school or other educational institutions shall be liable unless it can prove that it has fulfilled its duties of education and management. And if the subjects who are older than 8 years old but younger than 18 years old (a person with limited civil conduct capacity) were enrolled in the school accidents, school or other educational institution shall be liable if failing to fulfill its duties of education and management.

From the articles, it can be learned that the relationship between school and students in China is educating and managing. However, it should be mentioned managing has a wider range implying that school has to take responsibility to ensure the safety of the educational activities and security of school campus. Moreover, Chinese courts often post strict criterion for schools to pay the compensation during the law practice. For instance, a case happening in a primary school of Lingbao City, Henan Province, began when several children were playing and running on the playground during the rest time. One girl was knocked down by other kids, thereafter suffering the crown fractures of two teeth. The court thought school did not pay enough attention to the security of running kids, and then sentenced it to pay the whole compensation².

Chinese school accidents have three main characters: urgency, complexity and harmfulness.

School accidents with the very feature "unpredictable" lead to the urgency for school to react quickly and properly when it comes to an accident. But not every school can deal with accidents in a very short time. Here is an example, a grade 3 student A was then playing metal plate in the classroom during the rest time in a private primary school of

duties of management."

Chinese Tort Law (English Edition). Beijing: 2007. See: http://www.npc.gov.cn/npc/xinwen/2017-03/15/content_2018907.htm

² China Judgement Online: Bai Yaning v. Lingbao Second Experiment Primary School. See: <http://wenshu.court.gov.cn/Index>

Yuzhou City. However, A was shocked by student B and then suddenly stabbed B's eyes with the metal plate, which caused a grade 8 disability degree of B. From the moment the stab happened to the time when student B received the treatment, the primary school did not respond in time, which constituted to a delay for B's cure. At last, the court sentenced the primary school to pay 60% of the compensation, about 8000 dollars³.

Meanwhile, the forms of school accidents can vary from natural disasters to human behaviors, and the participants involved in school accidents at least consist of school and victims, which means different types and conflicting stakeholders in one accident will definitely increase the complexity of school accidents. However, there are neither specific explanations to the term "school accidents" nor clear ranges of activities belonging to "studying or living in the school" in the Chinese legal document. It means that ambiguous legal terms increased the burden of judges to handle the discretion when facing the complexity of cases.

Moreover, unsolved school accidents can easily accumulate. Chinese medical fees are pretty high not only for general families, but also schools. High medical fees became the focus of the disputes between schools and the injured, so it is hard for neither of the two sides to compromise. Unsolved school accidents may become the social issues affecting people's faith in either education system or government. So it means school accidents have really caused the huge damage in China.

III. SCHOOL ACCIDENTS IN SOUTH KOREA

Korea suffered a large number of civil disputes related to school accidents before 2007, which was similar to the situation that China is facing now. Laws and rules took teachers or school staff to account for school accidents. At that time, there were no certain standards to fit in the different accidental conditions. Meanwhile, most defendants were unable to pay or completely pay the high medical fees to compensate the harm. Therefore, many injured or deceased did not get what they should get. However, Korean government began to adopt another system to make up for school accidents in 2007, which is like a social relief where everybody in this society will help those who suffered misfortune by paying the tax. This system consisting of School Safety Mutual-Aid projects has played an important role to deal and prevent school accidents.

Unlike China, of which the law system sees school as a civil subject to liability in school accidents, Korea government would take the responsibility to compensate people who suffered accidents in school almost eliminating school's role in the school accident disputes. Here is what they wrote in the law ACT ON THE PREVENTION OF AND COMPENSATION FOR ACCIDENTS AT SCHOOL (hereinafter referred to as "APCAS"), Article 3: "The State or local governments may support the expenses required for the operation of projects to prevent school accidents and

mutual-aid projects for compensation of school accidents pursuant to this Act within the limit of budget."⁴ Education Ministry of Korean government sets up a Deliberative Committee dealing with matters relating important policies, decisions, prevention of school accidents, and operation of school safety mutual-aid projects. Therefore, the relationship between Korean schools and students is simplified as "educate and educated".

It is noticeable that Mutual-aid projects are to compensate the students, teachers and staff members, or the participants of educational activities whose lives or bodies have been damaged or injured due to school accidents, which specifically target at compensation of school accidents. Schools having joined in those projects theoretically do not need to worry about compensating payment for school accidents, which students will apply for the School Safety and Insurance Federation directly. In return, schools have to carefully check the equipment as well as launch the safety education regularly. Because this series of projects are from the government, all of the public schools and most of the private schools have taken part in voluntarily and actively, showing the Mutual-Aid project is really a good solution to initiate schools to take actions.

Because Korean government holds the school accidents under the frame of social security with the fiscal expenses, administrative operation will definitely call for clear and detailed standard of procedures as well as definitions of school accidents. The definition of school accidents in Korean Law is quite clear, written in the article 2 of APCAS⁵. With this definition, what should be mentioned is that not only students can benefit from Mutual-Aid but also teachers and staff members or participants of educational activities, which means that Korean Law enlarged the subjects of school accident from students to all people enrolled in the educational activities showing the feature as a social security. Not only that, Korean law also gives a precise scope of educational activities⁶. Unlike Chinese case that judging a

⁴ Act on the Prevention of and Compensation for Accidents at School (English Version). Seoul:2007 See: <http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=ACT+ON+THE+PREVENTION+OF+AND+COMPENSATION+FOR+ACCIDENTS+AT+SCHOOL&x=33&y=35#liBgcolor0>

⁵ "The term 'school accidents' refers to those prescribed by Presidential Decree, among all the accidents which damage the lives or bodies of students, teachers and staff members, or participants of educational activities, and the diseases contracted to students, teachers and staff members, or participants of educational activities directly caused by the affairs under the control and supervision of the school head such as school meals, during the course of educational activities." From Act on the Prevention of and Compensation for Accidents at School (English Version). Seoul: 2007 See: <http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=ACT+ON+THE+PREVENTION+OF+AND+COMPENSATION+FOR+ACCIDENTS+AT+SCHOOL&x=33&y=35#liBgcolor0>

⁶ "The term 'educational activities' refers to the following activities:(a) Classes, special activities, discretionary activities, extracurricular activities, training activities, or athletic meets performed under the management and supervision of the head of a school in or outside the school in accordance with the educational plans and policies determined by the curriculum of the school or the head of the school (hereinafter referred to as "school head"); (b) Going to and going out from school and activities performed by participating in various events or meets

³ China Judgement Online: Yuzhou Ethnic School v. Zhang. See: <http://wenshu.court.gov.cn/Index>

school accident usually depends on the sites, Korean term "school accident" has a larger scope implying that governmental financial support covers a wide range of items.

By reading some school accident cases in Korea, it helps to gain a deeper understanding of that larger scope compared to Chinese ones:

A. Case 1

"A junior high school student dropped down from a bicycle when he avoided a rush pedestrian, suffering the elbow fracture at 15.55, on 22th Sept, 2009. After the accident, he got the medical compensation from the Mutual-Aid project."⁷

This case shows that Korean government sees the term "school accidents" on a larger time scale as well as space scale. The accident happened neither inside of the campus nor during the school time, but Korean term "educational activities" consists of the "going to and going out from school", illustrating that Korean student can still get medical compensation whereas in China he would have to pay for himself or try to ask for compensation from that pedestrian.

B. Case 2

"A junior high school student was seriously injured in a fall from 4th floor of school building when he was passing the balcony during the rest time. After that, he received medical compensation from the Mutual-Aid project."⁸

The case clarifies that Korean government to some extent replaces schools to take the responsibilities after the school accidents. What caused this accident on the one hand, is the negligence of the falling student. On the other hand, it is school that did not check the facilities timely or ensure the security of students. If it happened in China, school might be blame for the full liability. For example, a Chinese resident student, attending a junior high school in Huang County, Henan Province, fell down from the 2nd floor window of the dormitory building while he was sleeping, and then was unfortunately determined to grade 9 disability degrees. Because the junior high school failed to prove that it had fulfilled the legal obligation to well equip school facilities, and according to the Tort Law Article 39, it was punished to pay the whole medical fees for the student, almost 2100 dollars⁹.

recognized by school heads; and (c) Other activities related to items (a) and (b) during the time prescribed by Presidential Decree." From Act on the Prevention of and Compensation for Accidents at School (English Version). Seoul:2007 See:

<http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=ACT+ON+THE+PREVENTION+OF+AND+COMPENSATION+FOR+ACCIDENTS+AT+SCHOOL&x=33&y=35#liBgcolor0>

⁷ School Safety and Insurance Federation: Soul Security Accidents 2010:15

⁸ School Safety and Insurance Federation: Soul Security Accidents 2010:65

⁹ China Judgement Online: Du v. No. 1 Middle School, Chuwang Town, Neihuang County, Henan Province. See: <http://wenshu.court.gov.cn/Index>

Going back to the Korean case, Mutual-Aid took the whole financial responsibility, and what the Korean school needs to do is to reflect on the reasons, comfort the student and his family, and improve the equipment.

C. Case 3

"During the practical activities of a junior high school, a student got the concussive brain injury after his friends were pulling the pranks at him by hitting him. After that accident, he got the full payment of his medical fees from the Mutual-Aid¹⁰."

The case shows that governmental compensation sometimes even takes place to afford the responsibility of the breach. The result of this Korean case is a surprise not only because that school does not have to pay the compensation but also because those students who were enrolled in hitting were exempt from the liability. Analyzed from the angle of Chinese civil law, the accident resulted from the hitting behaviors of other students and the negligent management of school. Therefore, both of the two sides shall be liable. For example, a case happening in a Hui minority primary schools of Yinchuan City, Ningxia Province that kid A pushed kid B from behind during the rest time, causing the injured a serious teeth injury. The court thought school did not fulfill its duty to conduct the safety education, or pay enough attention to the security of running kids, thereby sentencing it to pay the 40% of the compensation, with kid A family paying another 60%¹¹.

D. Case 4

"A senior high school student suffered an urgent heart attack and died unfortunately on 28th May, 2009. After the accident, Mutual-Aid paid the compensation fees to the student's family."¹²

This is a special case where Mutual-Aid is not an "insurance company" of school as much as a social relief. If there were a sudden death in China, wherever it happened the bereaved could only apply for compensation nowhere but the insurance companies. However in Korea, if it happened to a student during the educational activities, the bereaved will receive financial comfort from the government.

Now, it is easy to figure out why there are not so many disputes related to school accidents in Korea as those in China. Because governmental financial support really plays a big role as economic compensation is the best and quickest way to solve the accidental problems. What is more, the compensation range of Korean Mutual-Aid projects is as large as a social relief reducing the number of disputes as well.

However, every system has its own drawbacks.

¹⁰ School Safety and Insurance Federation: Soul Security Accidents 2010:66

¹¹ China Judgement Online: Gao and Yang, Zhang Huijuan, Yang Zhanju v. No.4 Hui Minors Primary School of Yinchuan City. See: <http://wenshu.court.gov.cn/Index>

¹² School Safety and Insurance Federation: Soul Security Accidents 2010:76

It is not so hard to figure out that rising numbers of school accidents and wider range of coverage will cause a heavy burden on fiscal expenditure. Korean government has to spend more on Mutual-Aid projects meanwhile re-balance the whole fiscal spending. Besides, due to the benefit from the government, some injured even intended to get a double compensation. There is a case from Jeju local court that a man attempted to apply for the compensation from Mutual-Aid again after he had already got the compensation from the entertainment park where the school activities set. In July, 2008, when participating in the educational activities in a Sea World entertainment park, a junior high student was washed away and drowned when he was playing. The parents of the dead did not file the lawsuit because they received 150,000,000 won as the compensation from the entertainment park, as a deal they promised not to file any lawsuits. But in 2012, the father of the dead kid applied for the compensation from Mutual-Aid, around 46,000,000 won¹³, which is against the article 44 of APCAS¹⁴. The entertainment park had already paid the compensation meaning that Mutual-Aid would not give a double payment, so the father was against the law. We never know how many people received double payment from the Mutual-Aid, but we know that it, indeed, can be a heavy burden for the School Safety and Insurance Federation to ask for more fiscal expenditure from the upper government administrations, causing inefficiency to pay the compensation for the injured or deceased.

Also, Mutual-Aid is always blamed for the unfairness. On the one hand, without judge, it is difficult for Mutual-Aid to convince fairness by relying on researchers who applied situations to the rules. On the other hand, because different local governments own different Mutual-Aid projects, there are regional distinctions of the criterion to the amounts of compensation. If someone did not get satisfying compensation, he would easily tend to complain the unfairness of the Mutual-Aid with which government should face.

In addition, some poor private schools cannot pay the membership fees of Mutual-Aid projects, so they have to bless that in the future there would be no school accidents in the educational activities, or they have to afford the high compensating medical fees on their own. In this case, it

reveals there is still a long road for Korean Mutual-Aid system to achieve redistributing justice.

IV. CONCLUSION

Although Korea and China have different methods to deal with the school accident disputes, they have to be faced with the same dilemma. It is extremely hard for either government researchers or judges to decide how much the compensation is and on what criterion it should be based. To the former, it is a problem about applying to official rules while to the latter it is a challenge of conducting the discretion.

Apart from that, both of the two sides legislate the compensation articles based on reasonable legal theory and both of the solutions have pro sides and con sides. Therefore we cannot decide which one is better especially when faced with the complex current social situations. But on the contrast, we can easily realize it is the enforcement of the law that is the most important to prevent the school accidents in our societies. However, this is another problem about governmental efficiency, social environment, security education, and family education, which needs studying.

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¹³ National Law Information Center. See: <http://www.law.go.kr/precInfoP.do?mode=0&precSeq=183802#jun>

¹⁴ "Article 44 (1) In the event that the school accident occurred due to the causes applicable to any of the following subparagraphs and the Mutual-Aid Association has paid the mutual-aid benefits to the person entitled to receive the benefits, the Mutual-Aid Association may claim the person who caused the school accident or his/her guardian, etc. to pay the amount equivalent to the mutual-aid benefits paid to the person entitled to receive the benefits: 1. Where the school accident has been caused intentionally or by gross negligence of the beneficiary; and 2. Where the school accident has been caused intentionally or by gross negligence of the person other than the beneficiary or mutual-aid member." From Act on the Prevention of and Compensation for Accidents at School (English Version). Seoul: 2007 See: <http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=ACT+ON+THE+PREVENTION+OF+AND+COMPENSATION+FOR+ACCIDENTS+AT+SCHOOL&x=33&y=35#liBgcolor0>