

Life Imprisonment in South Korea: Law and Practice in Recent Trends

Youjeong JEONG, Lecturer at Aoyama Gakuin University

Osamu NIIKURA, Professor emeritus at Aoyama Gakuin University and
Attorney at law

1. What's on the Table

The abolition of capital punishment is a global tendency. The Amnesty International reports that 108 countries abolish it for all crimes, and that abolitionist countries, de facto or de jure, amount to 144 now. As for South Korea, it has never executed a death penalty since the last ones in December 1997, a fact that may rank our country as abolitionist in practice. But problem is that the death penalty system itself has never been set aside; it's still alive even sleeping for a long time. That is why South Korea has no life sentence in its criminal justice system.

In this regard, we have a hot criminal case. This month (September 2021), the prosecutor demands a death sentence against an accused who allegedly killed three persons such as a woman he had targeted for stalking, her mother and sister. Next October we will hear the sentence. As you might see, we have various kinds of hot issues in regard to the death penalty, going from general debates over its abolition to treatments of death row inmates by passing introduction of life sentence. Particularly I'd like to focus on what discussion is taking place about life sentence in my country. I hope that will give fruitful discussion in this regard.

This report is based on my report made at the Kyoto Congress last February.

2. Current situation of the death penalty in South Korea

The penal code of South Korea sets in article 41 the death penalty at the top of the penal system. In December 30, 1997, the Government brought 23 inmates to execution. In 2007 after 10 years since then, the Amnesty International called our country as abolitionist in practice. This year then marks 24st year of suspended execution. During these years, Korean society as a whole has never stopped to discuss the death penalty. Particularly in a recent couple of years, hot debates are coming up about a life imprisonment as an alternative to abolition of death penalty. There may be lots of reasons and plausible explanations why the death penalty has never executed for so many years, but my take is that capital punishment itself won't be compatible with a global standard of a human

rights developed country.

As a matter of fact, however, South Korean Government has abstained draft resolutions to be posted on the General Assembly of the UN on moratorium of the death penalty for 7 times from 2007 to 2018. In addition, in February 2019, the Government refused to accept a recommendation proposed by the National Commission on Human Rights on adherence to the second optional protocol to the International Covenant on Civil and Political Rights.

At last, however, the tide is changing: in November 17, 2020, at the Third Commission of the 75th session of the General Assembly, the South Korean Representative voted in favor of a draft resolution on moratorium of the death penalty to see it successfully adopted. Now the wind is blowing in many ways. Changes may surely come in various fashions.

During these 24 years of moratorium in practice, a few cases have death sentences. Actually, out of 60 convicted to death, 56 are civilian and other 4 are military personnel, and they are still alive in prison. A research in 2020 finds that the shortest term of detained person is 6 years, and the longest amounts to 27 years in prison. As Nelson Mandela detained for 26 years in prison, it must be extraordinary to hold death row inmates for such a long period of time.

3 Judicial decision on the death penalty and responses of authorities

A judicial decision may cast the most important influences on a debate whether or not to abolish the death penalty, and even attract and concentrate people's attention. The Constitutional Court in South Korea has given a green light to this punishment in 1996 by voting 7 against 2, and in 2010 by voting 5 against 4. Now the third case has come up to the Constitution Court in February 2019 for alleged constitutionality of article 41 of the Penal Code on the death penalty.

The National Commission on Human Rights submitted in February 2021 a statement to the Constitution Court by saying that Life will never recover for good once lost in one way or another, and that Life is of absolute value unexchangeable for nothing in the world, and saying that Life is dignified human existence itself. The statement also points out that Human life and the right to life is the most fundamental human rights among other basic human rights, and that it is plausible that the State has the duty to protect and secure it,

and lastly that the State has no right to deprive of the right to life. On the contrary, the Ministry of Justice submitted a counter statement that the death penalty has a reasonable role to play of necessary evil to deter crimes.

4. Public opinion on the death penalty and implication of changing opinions

The opinion poll shows how South Korean people may accept the death penalty. Majority is in favor of holding it, just like a public poll shows in Japan. In 2018 the National Commission on Human Rights carried out a research on the death penalty. Judging from the outcome, we can safely say that in order to get more favorable opinions for the abolition, it appears necessary to propose a suitable alternative. In comparison of a poll of 2018 with that of 2003, there is palpable increase in number of opinions for affirming the capital punishment. That may suggest that deterrence is at heart of the issue, and that sentiment for retribution might lead to a conclusion that the death penalty would be a good way to achieve a good goal.

Public Opinions show some changes

In the survey by the National Commission of Human Rights:

□ 2003 Survey; ◆ 2018 Survey

- Opinion for harsher punishment □ 8.3% ◆ 19.9%
- Maintained, but cautiously to be sentenced and executed
□ 57.6% ◆ 59.8%
- To be abolished in the future □ 20.9% ◆ 15.9%
- Immediately to be abolished □ 13.2% ◆ 4.4%

5. Alternative punishment of abolition of the death penalty

It is noteworthy that 7 out of 10 people say yes to abolish it in case of suitable alternative to the death penalty. In that case, people in favor of the abolition come up to 66.9% from 20.3%. As for kind of alternative, a majority of 82.5% people are in favor of absolute life sentence or Life Without Parole (LWOP) combined with some kind of punitive damages; next comes vote for a simple life prison; then follows imprisonment with labor for indefinite term, and lastly comes relative life prison or Life With Parole (LWP).

Opinions on alternative of abolition of the death penalty

★ LWOP ◆ LWOP + Punitive damages ○ LWP □ Imprisonment with labor for indefinite term

- In total ★78.9% ◆82.5% ○38.0% □43.9%
- Immediate abolition ★84.1% ◆84.1% ○59.1% □72.7%
- To be abolished in the future ★90.6% ◆88.7% ○54.1% □71.7%
- Maintained, but cautiously to be sentenced and executed
★79.4% ◆86.5% ○34.1% □39.3%
- Opinion for harsher punishment ★66.8% ◆78.9% ○32.2% □29.1%

6 Thinking about alternative punishment after abolishing the death penalty

In South Korea, a hot debate is taking place about the two types of alternatives after abolishing the death penalty. One side takes a life prison, and the other takes the same type of actual punishment with limited but much longer term. This is why a remarkable number of comparative studies are focusing on European countries for their abolitionist position, and the USA in term with case studies where penal systems are different from one State to another. As for Europe, we are interested to know how the alternative penalties have been used after abolishing the death penalty, and what consequences they make up to now. As for the USA, we are interested in comparative studies about on-going system in each States.

1) As for a life imprisonment of American style, increasing number of experts in our Country tend to approve of it in favor of harsher punishment policy (or Zero Tolerance Policy) as a kind of penal culture. Particularly a life without parole (LWOP) is gaining increasing number by far of consenting voices. Problem is that under this system, lost of hope for rehabilitation makes it difficult to achieve the final goals of correction and rehabilitation itself. Also, it is said that under this system a judicial procedure would face many difficulties in protecting rights of persons concerned. Just as in the death penalty system, voices are raising against the life prison without parole (LWOP) as it is incompatible with human dignity in term with constitutional rights. This is the very

serious and fundamental problem that LWOP should face just like the death penalty does.

Life with parole (LWP) is, on the contrary, said that it has some effects of intimidation as it could have, but it can't go without problems such as no super due process protection is assured under State constitutional systems, and that eventual judicial errors might be unavoidable under the peculiar judicial procedure such as plea-bargaining, and finally that long incarcerations would affect State budgets, which means financial difficulties from a viewpoint of cost-benefit analysis. In total, LWP has many difficulties in procedural and administrative viewpoints when it comes up for an alternative of abolition of the death penalty.

2) On the other side, European countries have different ideas and standards about life prison systems from one country to another, but a basic understanding can be conceived to the extent that a life imprisonment would not mean detention in a prison until the last day of life. More importantly, life prison is taken as a punishment with restricted freedom, which means generally that rehabilitation of detained persons is the basic aspect of penal system. In summing up, a life prison is no exception in Europe in its basic feature to such an extent that anything good for rehabilitation must be applied to life prisoners. As a whole by reforming relevant legislations such as Penal Codes in connection with relevant procedural reforms, European countries tend to change life prison systems for better by accepting a parole system which could be placed under judicial control. Life prison in Europe may change successively and is still developing.

From Korean viewpoint, we are weighing a crucial problem to the point that LWOP might go encounter against human dignity and values as human being. If a choice between LWOP and LWP were called, LWP is gaining more points now in South Korea. It means that a life prison with a possible parole is preferable by support of stronger voices.

6. South Korea from Now on

Actually, death row inmates are treated legally as prisoners pending trial, but practically, as inmates as they are already convicted. Problem is that discrepancies are wide from one correction facility to another, and lifers tend to spend longer days in a prison than ordinary inmates. As legally treated as not yet convicted, lifers could be excluded from ordinary correctional programs such as in vocational training and/or liberal arts education. There are still going on uncertain situations in treatment of death row inmates, and unstable states of mind that they should experience day by day while they are sentenced to death

but pending execution, without saying that execution might be carried out one day.

In order to avoid the worst scenario, we are trying harder to discuss remaining points of issues about a life prison in South Korea. I'd like to give an example. While a public poll shows that majority of people (84.5%) are in favor of deterrence of the death penalty, actually a research study demonstrates a myth of deterrence. It's a study presented in 2020 by Hyeong-min Park, Dae-geun Kim and others, "*The Condition and Characteristics of Prisoners on Death Row.*" According to it, the convicted are asked if they have feared or thought on the very moment of committing a crime whether they might be sentenced to death or arrested and punished for what they had just actually committed, most of the convicted reply that they had got no idea of punishment, or that they had been drunken or furious to the extent to take no account of reasonable thinking, or lastly that they had even no real idea that they could be arrested. Demonstrating real data is very important. People need to know up to what actual extent they have knowledge about the death penalty, and what actual consequences the death penalty might affect. The same is true in case of alternative punishment. Demonstrating real data need more and more. Korean studies about alternative penalties in Europe and the USA show a preferable way to follow; I mean that we had better to choose LWP rather than LWOP as the latter tends to infringe human dignity. We have to shed more light on procedural issues, and to try to improve shortages in our criminal justice system. Lastly but not the least, I'd like to point out that ordinary people in South Korea need to overcome lack of real knowledge about a life prison. Many things must be done, and can be done by improving shortages. So, I recommend finally that we should try our best to give much more real data to the public in this regard.

Thank you for your attention.

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(First Author) Ms. Youjeong JEONG

(Second Co-Author) Professor emeritus Osamu NIIKURA

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