

points of amendment, it is possible to explain this amendment from the viewpoint of making litigation proceedings speedier and more efficient.

6. Criminal Law and Procedure

Law for the Amendment of a part of the Criminal Law —Offenses Committed Against Japanese Outside the State— Law No.122, July 11, 2003 (Effective on August 7, 2003).

Background:

In recent years, many Japanese are active outside Japan as a consequence of globalization, and they have higher and higher risk to meet with crimes. So, the Amendment aims to protect Japanese in action outside Japan from serious crimes, such as Murder and Robbery.

Until the Amendment 1947, the Japanese Criminal Law has had the provision for the protection of fellow countrypersons being active outside Japan. But it was struck out in consideration of legislation by foreign countries.

This time around, the outline of the Amendment 2003 was inquired from the Council of Legislation by the Ministry of Justice in December, 2002, taking advantage of the TAJIMA case. In this case, a Japanese member of a crew was killed by Filipino fellow members in the high seas off the coast of Taiwan. But the Japanese Bureau of Investigation hesitated to intervene in that case, because the nationality of the ship was Panama. And the Panama Bureau also was negative about interventions, for, in fact, the ship was owned by Japanese. This was because the owner of the ship acquired the nationality of the ship in Panama where tax, employment of foreigner members of crew and so forth were convenient for him. Accordingly, in order to ensure protection of the Japanese outside Japan, an Amendment of the Criminal Law was called for.

The outline was discussed and approved by the Council of Legislation and the Criminal Section established in it. On the basis of the

report, the Ministry of Justice planned the bill. In February, 2003, the Ministry of Justice submitted the bill to the Diet. And in July, the “Law for the Amendment of a part of the Criminal Law” was enacted. According to this law, a part of the Criminal Law, the Law for the Punishment of Violent Conduct and so on, and the Law for the Punishment of Duress by means of Hostage were amended.

Main Provisions:

(About the offenses which are selected, and the reason for the selection) According to the Article 3.02 of the Criminal Law established by this law, foreigners who committed the following crimes against Japanese outside Japan are convicted under Japanese Criminal Law.

- a) Sexual Assault with force or threat, Rape of a woman with force or threat, Sexual Assault toward a person who is insane or unable to resist, or a person who is made insane or unable to resist by the aggressor, Rape of a woman who is insane or unable to resist, or a woman who is made insane or unable to resist by the aggressor, Attempts at these offenses, and Homicide or Bodily Injury through these offenses or Attempts,
- b) Murder, Manslaughter, and Attempt at them,
- c) Bodily Injury, and Homicide through Bodily Injury,
- d) Confinement, and Bodily Injury and Homicide through Confinement,
- e) Kidnapping of a child, Kidnapping which aims at interest in terms of property, obscenity, and marriage, Kidnapping which aims at ransom, Kidnapping which purposes to transport a person overseas, Getting a person who is kidnapped, and Attempts at these offenses,
- f) Robbery, Robbery after Theft in order to make sure of property, escape from arrest, and the destruction of evidence, Robbery after making a person intoxicated, Bodily Injury and Homicide through Robbery, Rape of a woman with force or threat on the occasion of Robbery, Homicide through Rape of a woman with force or threat on the occasion of Robbery, and Attempts at these offenses.

These offenses are selected from the point of view of the protection of Japanese nationals from serious crimes against important individual interests. These interests include Life, Person, Liberties of Physical Action which follow Life and Person, and Sexual Liberty. And these crimes are chosen from ones which are provided in the Article 3 of the

Criminal Law which punishes the Japanese who committed the these outside Japan. That is in order to maintain fairness between the Japanese offenders and the foreign ones.

In the Council of Legislation, the question why Neglect, Bodily Injury and Homicide through Neglect, Abortion without Consent, and Bodily Injury and Homicide through Abortion without Consent were not included was posed. The Ministry of Justice replied that those offenses seldom happened. But, against this reply, the criticism that the territorial applicability of the Criminal Law should be decided not according to necessity but according to principles was raised.

(About “outside Japan”) Offenses, which are committed outside Japan from beginning to end, are included in this Article.

(About “victims”) The word “Victims” means victimized persons who have Japanese nationality. And, for example, in Robbery, the “victims” which are provided in this Article include the following two cases. a) a Japanese who is assaulted when a foreigner is a possessor of a property, but he or she is not assaulted, b) a Japanese who is a possessor of a property, but is not assaulted when a foreigner is assaulted. But, when only the proprietor is a Japanese, he or she is not a “victim”.

(About whether offenses, which are provided in this Article, are similarly illegal in the country where some of them are committed or not) The Japanese Criminal Law is applied to offenses which are provided in this Article, even if it is not an offense in the foreign countries where it is committed.

(About the balance of Penalty) The Japanese Criminal Law is applied through this Article, whether or not the offense is punished more seriously or more lightly in the foreign country where the offense is committed. That is because this Article aims at the protection of Japanese, and because Penalties in the Japanese Criminal Law are reasonable, and it is impossible to follow individual cases on account of the difficulty of carrying out a search.

(About the Search) This Article is not applied to all cases. Even if the Japanese Police intervene in a case, they will cooperate with these of the foreign country where an offense was committed, as usual.

Editorial Note:

In a sense, the Article 3.02 of the Criminal Law established by this law is a revival of the Section 2 of the Article 3 which was struck out on the occasion of the Amendment 1947. At the time, the Section 2 of the Article 3 was considered to go against international cooperation. But, in fact, all countries do not protect individuals sufficiently. So, we cannot sweepingly say that Section 2 of Article 3 was nationalistic.

But the territorial principle is the main principle in international criminal law. Accordingly, some countries respect the right to punish citizens of another countries. For example, Switzerland applies the criminal law of the country, where the offense was committed, in her court and does not punish the offender if the country, where he or she has committed a crime, has already penalized him. But Article 3.02 of the Japanese Criminal Law does not set a limit of this sort to itself. Consequently, the Article 3.02 can be grounded only by the intention to protect the nation.

In the global age, more and more Japanese are active outside Japan, and the state must always end up reacting after the event concerning measures against crimes. Considering it, the establishment of the Article 3.02 of the Criminal Law is very valuable for the protection of the Japanese who play an active part in foreign countries.

Concerning the importance of the offenses provided in Article 3.02, we need not always follow foreign criminal laws, yet we must not ignore them. For example, in the Netherlands, Euthanasia is lawful. So, we cannot punish the Dutch doctor, who euthanized a Japanese in the Netherlands, according to the Japanese Criminal Law. We should fully investigate foreign cultures and cooperate with foreign countries on the occasion of search.