

## A brief study on mistake of law

### 법률의 착오에 대한 소고

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#### 국문초록

만약 우리가 해당 문제영역에 대해 집행 권한 있는 공무원의 공식적인 법률 해석을 신뢰하였음에도 불구하고 법률위반을 이유로 처벌을 받는다면 우리는 행정부나 사법부를 신뢰할 수 있을까? 특히 현대 한국사회는 소위 행정형법이 난립하고 있는 상황이기에 비록 법률전문가라고 할지라도 모든 법률을 알기는 어렵다. 다행히 우리 입법자는 이러한 미래의 상황을 내다보고 법률의 착오에 대한 형법 제16조를 이미 마련해 두었다.

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무엇보다 형법 제16조의 법률의 착오의 효력은 단지 형사책임을 감경하는데 그치지 않고 형사책임을 조각함으로써 범죄불성립이라는 강력한 효과를 부여하고 있다. 이제 우리는 미연방법원을 비롯한 미국법원에서의 법률의 부지나 법률의 착오에 대한 판례에 주목해볼 필요가 있다. 단순히 법률의 착오에 대한 효과에만 주목한다면 당연히 형벌의 감정보다는 책임조각이라는 효과가 훨씬 강력하다. 그러나 우리 대법원 판례 중에는 법률의 부지를 법률의 착오로부터 배제하고 행위자가 자신의 행위가 위법하지 않다고 믿은데 대한 합리적인 이유를 검토조차 하지 않음으로써 법률의 착오에 대한 규정의 취지를 몰각시키는 경우가 없지 않다.

따라서 대법원은 법률의 부지를 법률의 착오의 영역에서 배제할 것이 아니라, 오히려 피고인이 자신의 행위가 불법하지 않다고 믿은 것에 합리적인 근거가 있는지를 상세히 검토해야 할 것이다. 아울러 형법 제16조의 법률의 착오는 책임조각이라고 하는 효과를 부여하는 점에서 행위자에게 유리한 규정이다. 이 범위를 협소하게 해석하여 적용하는 것은 행위자에게 유리한 규정에 대한 축소해석으로서 죄형법정주의의 차원에서 볼 때에도 문제가 없지 않다.

**주제어** : 법률의 착오, 법률의 부지, 죄형법정주의, 적법절차

## I . Introduction

There is one of the well-known old criminal law proverbs from Roman law that “Ignorance of the law is no excuse”<sup>1)</sup>. However, this proverb could be accepted as a reasonable word only if every man is presumed to know the law. In 1953, the legislators of Korean criminal law had already expected that there will be created a large number of laws in the future. Thus the article 16 about ‘mistake of law’ in Korean criminal law stipulates

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1) See Ronald A. Cass, “ignorance of the law: A Maxim Reexamined”, William & Mary Law Review Vol. 17 Issue 4, 1976, p.671, 685.

“When a person commits a crime not knowing that his act constitutes a crime under existing Acts and subordinate statutes, he shall not be punishable if the misunderstanding is based on reasonable grounds.”

Now how many laws stipulate criminal punishments which will be imposed if a person breaks the particular law? Refer to the search result of the home page of ministry of government legislation on Mar. 28, 2015, the number of laws which stipulate ‘imprisonment’ as well as ‘fine’ are 2,163, the number of laws which stipulate ‘imprisonment’ are 2,753, the number of laws which stipulate ‘fine’ are 3,401.<sup>2)</sup> Therefore, it is not easy for us to know the all laws that provide criminal punishment. A person is difficult to know whether his or her actions are prohibited or permitted by law. Even if a person is a jurist, the jurist also must be difficult to know all the practical meaning of criminal laws.

Nevertheless, the Supreme Court Decision of Korea tends to exclude the ignorance of law from the misapprehension of law. For example, the defendant based on trust about police official notice and sold alcoholic beverages to juveniles.<sup>3)</sup> The Supreme Court punished him for violating ‘Protection of Minors Act’. Although the article 16 of the Korean Criminal Code clearly expresses that a person who has a ‘reasonable ground’ to trust his or her action is not a crime should not be punished above mentioned, the Supreme Court tends to recognize narrowly the scope of the reasonable trust.

First, this paper will research the legislative purpose of the article 16, the original defects of the article 16 in itself and the interpreting way of the article 16 with the legislative purpose of the article 16. Second, this paper will analyze the reasonable grounds to permit ‘mistake of law’ in comparative

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2) search on the homepage of Ministry of Government Legislation: <http://www.moleg.go.kr>

3) Supreme Court Decision 85Do25 decided April 9, 1985 【Violation of the Protection of Minors Act】

legal approach. This chapter will include analyses about Korean, U. S. cases related to mistake of law. Finally, this paper will suggest the interpret way -especially, the scope of the reasonable grounds- about the article 16 of 'mistake of law', so it must be one of the helpful ways to realize the function of freedom guarantee of criminal law and the principle of "nulla poena sine lege(principle of 'No Crime, No Punishment')", that is, the principle of legality.

## **II. Interpreting Way of the Article 16 of the Korean Criminal Code based on the Legislative Purpose**

### **A. the legislative purpose of the article 16**

According to the principle of legality as one of the fundamental bases of modern criminal law, legislators should create the laws which provide 'what is a crime' and 'what kind and how amount of punishment will be imposed for the crime' if a person violates the prohibitions before a person do the act. Because, the laws are one of the standards for people to choose whether a person will do something as well as one of the standards for judges to decide some ruling about a certain case. Especially, in order to realize the function of freedom guarantee of criminal law, it should be possible for an individual to know what is prohibited or permitted through the provisions of laws.

Now is it easy for us to know 'what kind of acts are prohibited' and 'what kind and how amount of punishment will be imposed for the crime'? Absolutely, it is not possible to know all the criminal laws. As I mentioned in the introduction of this paper, there is a large number of substantial meaning of criminal laws in Korea. In other words, the situation which is

so-called 'administrative criminal laws' crowd around the society of Korea makes us fall into difficulty with knowing the laws. However, the legislators of Korean Criminal Code expected that a lot of laws are created in the future, and they had already enacted the Article 16 of 'mistake of law'. One of the legislators wrote that the provision of 'mistake of law' reflected the tendency to enact more complex criminal laws, thus the legislators recognized that it was going to be difficult for the citizen to know whether an action violates the laws. The legislator called the provision of 'mistake of law' one of the provisions for democratizing the criminal law.<sup>4)</sup>

In addition, the legislator explained the situation of legislation in detail. According to his paper, although the draft criminal law had stipulated 'could not punish the actor', the criminal law gave more powerful effect on 'mistake of law' with 'should not punish'. He wrote that reasonable grounds meant the actor asked at least jurist or a public officer who works at the certain public service with authority to administer and interpret the related laws.<sup>5)</sup>

If a judge applies narrowly the provision of mistake of law, this will violate the principle of legality and the function of freedom guarantee of criminal law because the provision of mistake of law is one of the advantageous provisions for the defendant. Nevertheless, the Supreme Court Decision of Korea excludes the ignorance of law from the misapprehension of law.

This problem is from some defects of the words which are in the article 16 of mistake of law in itself. However, we should interpret the defective words as to be suitable for the legislative purpose of the provision as possible. Therefore, this paper will deal with the original defects of the article in itself as follows.

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4) 엄상섭, "우리 형법전에 나타난 형법민주화의 조향", 효당 엄상섭 형법논집, 서울대학교 출판부, 2003, 75면 참조.

5) 엄상섭, 앞의 논문, 76면 참조.

## B. the original defect of the article 16 in itself

The article 16 about ‘mistake of law’ in Korean criminal law stipulates “When a person commits a crime not knowing that his act constitutes a crime under existing Acts and subordinate statutes, he shall not be punishable if the misunderstanding is based on reasonable grounds.”

This provision could be interpreted at least two different ways. First, someone understands that the provision of the mistake of law could be applied when a person misunderstands that his or her action is permitted or not prohibited exceptionally even though the person knows the provision for prohibiting or permitting. If we were in the first viewpoint, it tends to except the ignorance of law from the misapprehension of law.<sup>6)</sup> Second, someone perceives that the scope of the mistake of law includes the ignorance of law because the both reasons could cause misunderstanding about the law. The Supreme Court chooses the former interpretation of law. How could we solve this problem? We already know the principle of the legality, and one of the important functions of the principle is to guarantee an individual freedom against illegal punishment by governmental authority. Therefore, in a viewpoint of the principle of legality, interpreting narrowly a provision which gives the citizen an advantage causes a violation of the principle of legality. In this point of view, the rulings on mistake of law have been criticized by scholars.<sup>7)</sup>

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6) 같은 취지의 지적으로 허일태, “법률의 부지”, 고시계 1993년 10월호(통권 제440호), 1993.9, 61면 참조.

7) 같은 취지에서의 비판으로 “법률의 착오는 위법성의 인식이 없는 모든 경우를 말하는 것이 일반적이지 범죄가 되는 행위지만 자기의 특수한 경우에는 허용된다고 오인한 경우에 제한된다고 해석할 수는 없다. 따라서 금지규범을 인식하지 못한 때에도 당연히 법률의 착오에 해당한다고 해야 한다.”고 하는 이재상, 형법총론(제7판), 박영사, 2012, 330-311면; 정영일, 형법강의 총론, 학림, 2013, 252-253면; 허일태, 앞의 논문, 59-60면;

### **C. In a viewpoint of comparative criminal law, critical analysis on the restrictive interpretation about article 16**

The article 16 about 'mistake of law' in Korea stipulates 'no responsibility' as the effect if the person's action has a reasonable basis. In contrast, mistake of law in the common law was not a defense; Ignorance of the law was no excuse.<sup>8)</sup> However, currently ignorance or mistake of law in the case law of the U.S. Supreme Court plays only as a limited defense to criminal liability.<sup>9)</sup>

On the outside the effect of 'not be punishable' in Korean Criminal law gives an actor more advantage than the effect of 'limitation on criminal liability'; 'no responsibility' seems to exclude criminal responsibility totally only if a person has a reasonable ground; A limitation about criminal liability looks like not exclude but only reduce the degree of criminal liability. Nevertheless, the Supreme Court of Korea has interpreted narrowly the article 16.

Although the article 16 about mistake of law in itself has the original defect from the expression of the provision which has a possibility to interpret that the article 16 could be applied the case only if the defendant knows the law and misunderstands that he or she is permitted the action exceptionally, the court should interpret the article 16 in accordance with the purpose of the principle of legality. As we already know, the principle of legality pursues the securing of individual's liberty. The restrictive interpretation of the court about the immunity scope of criminal liability of the article 16 causes the violation of the function of freedom guarantee of

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8) See John M. Burkoff · Russell L. Weaver, *inside criminal law*(2nd Ed.), Wolters Kluwer, 2011, 57p.

9) See *Ibid.*, 58p.; Edwin Meese III · Paul J. Larkin Jr., "Reconsidering the mistake of law defense", *The Journal of Criminal Law & Criminology* Vol. 102 No. 3, Northwestern University School of Law, 2012, 737p. footnote 63

the principle of legality because the article 16 about ‘mistake of law’ gives the citizen the advantage, ‘no criminal liability’.

### **III. Reasonable Grounds to Permit ‘Mistake of Law’ in Comparative Legal Approach**

#### **A. the leading cases about ‘mistake of law’ of Korean Supreme Court**

##### **a. The Supreme Court Decision 85Do25**

The fact of the leading case of Supreme Court Decision 85Do25 is that the defendant based on trust about police official notice and sold alcoholic beverages to juveniles. The Supreme Court punished him for violating ‘Protection of Minors Act’<sup>10)</sup>.

In the review of the fact of the case, the defendant had a question that he could sell alcoholic beverages to minors who were above 18 years old or university students who were not adults yet. Bar owners including the defendant asked the police that they could sell alcoholic beverages like beer to a person who was over 18 years old or a university student who was not an adult yet. However, they did not receive a correct and clear answer. After this question, the Commissioner of the Gyeong-Gi Provincial Police Agency informed the district police stations by an official document that a person who is prohibited the entrance bar was under 18 years old and high

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10) At that time, the age of the minor is below 20 years old; The article 4 of the Korean Civil Law stipulated “Majority is attained upon the completion of twenty full years of age.” According to the current civil law, majority is attained by a person upon the completion of 19 years of age. This article 4 about ‘majority’ has been enforced since Mar. 7, 2011.

school student. The bar owners knew the information through a phone call or visiting and asking the question. Therefore, the defendant sold alcoholic beverages to ten minors.

The defendant trusted in the information from the police officer. In other words, he believed the official notice that the target person of control entrance was under 18 years old or high school student. Nevertheless, the Supreme Court ruled that he was guilty because he did not know 'the Protection of Minors Act'.

The Supreme Court excluded 'the ignorance of law' from 'mistake of law', and the Supreme Court did not review whether the defendant had a reasonable ground or not. The reason was that the defendant did not know the provision which prohibited to sell alcoholic beverages to all the minors, that is, under 20 years old; Thus, the defendant did ignore the law, so the ignorance of law did not be included in the scope of 'mistake of law', an actor misunderstood actively his or her action was permitted by law. In addition, the Supreme Court stated that the fact that the police office excluded the minors who was 'over 18 years old' or 'not a high school student' from controlling the entrance of the bars did not affect whether the act would be punished or not, as long as the defendant violated the article 4 clause 1 and 2 in 'the Protection of Minors Act'.

If you were in this situation, you must trust in the police officer's information. Because the police officer has the authority to control the run of the bars, we naturally believe the interpretation about 'the protection of minor act' of the police officer. Almost all people must think that the defendant had a reasonable ground for selling the alcoholic beverages to the minors. From a viewpoint of general citizen, even though the citizen trusted in the public official who has the authority to control his or her duty field, the citizen should be punished like this leading case, who can we trust in, and who should we ask about questions?

Moreover, did not the defendant in this case actually know the Protection of Minors Act? He must know the provision of the protection of Minor Act. Therefore, the defendant did not occur 'ignorance of law' but 'the range' of the target ages of entrance prohibition.<sup>11)</sup> In addition, although we make a concession to the viewpoint of the Supreme Courts, the defendant fell into 'ignorance of law', there is no reasonable ground in the question why 'ignorance of law' should be separated from 'mistake of law'.<sup>12)</sup>

b. The Supreme Court Decision 2002Do344

In the case of 2002Do344<sup>13)</sup>, the Supreme Court did not punish the defendant in the result, but the main reason has not changed. In other words, the Supreme Court stated again that the article 16 about 'mistake of law' does not means that simple 'ignorance of law' is permitted; the article 16 means, although the act is illegal, the actor misunderstands that his or her action is permitted by provisions or rules particularly, and the actor has a reasonable ground for the misunderstanding.

Reviewing the fact of this case, the defendant who was the owner of video room services rent a video room to a juvenile who was 18 years old, so the defendant violated the juvenile protection act.

As one of the reason about the decision, the Supreme Court stated that

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11) 같은 취지의 지적으로 “이와 같은 포섭의 착오를 대법원은 법률의 부지라고 칭하고 있으나 이것은 반드시 정확한 표현을 아니라고 본다. 왜냐하면 본 사안에서 ... [피고인]은 이미 미성년자보호법상의 형법법류를 알고 있기 때문이다.”라고 하는 신동운, 신 판례백선 형법 총론, 경세원, 2009, 426면 참조.

12) 같은 취지의 지적으로 “이론상 ‘법률의 부지’와 금지착오를 구분할 명백한 이유는 없다고 본다. 오히려 양자의 구별기준이 불명확하여 가벌성의 범위를 부당하게 확장할 우려가 있다. ... 형법 제16조의 적용범위를 임의로 축소시키는 것은 행위자에게 불리한 유추해석[으로] ... 죄형법정주의 원칙에 비추어 문제될 소지가 크다고 할 수 있다.”고하는 정영일, 앞의 책, 252-253면 참조.

13) Supreme Court Decision 2002Do344 decided May 14, 2002 【Violation of the Juvenile Protection Act】

the subparagraph 2 item 'da' of the attached Table 1 of the Article 14 in 'Enforcement Decree of Sound Record, Video Product and Game Software Act' stipulated that the owner of video room services should attach the notice "No admittance to those under 18 years of age"<sup>14)</sup> on the entrance. Therefore, if we interpret this item 'da' by Contrary interpretation as one of the ways of interpreting statutory, we can interpret the meaning of the item 'da' as "a juvenile who is 18 years old is allowed to enter video rooms". However, 'he subparagraph 2 item 'da' of the attached Table 1 of the Article 14 in 'Enforcement Decree of Sound Record, Video Product and Game Software Act' was against 'Enforcement Decree of Sound Record, Video Product and Game Software Act', so the item 'da' was invalid.

The Supreme Court applied the Article 16 of 'mistake of law' in Korean Criminal Law to this case. However, in my opinion, the Article 16 of 'mistake of law' does not mean the mistake of the legislation in itself; it does not mean the mistake of legislators. It means that a person misunderstands the meaning or contents of the laws. This point is more obvious through the paper of one of the legislators of Korean Criminal Law. He explained the legislative purpose of the article 16 of 'mistake of law': If the government punishes an actor because the actor does not know laws, such a principle is extremely severe against the actor.<sup>15)</sup>

## **B. the rulings about 'mistake or ignorance of law' of the U. S. Courts**

Although the facts are different, some cases contain considerable legal points to judge the cases related to 'mistake of laws' like the Korean Supreme Court Decision 85Do25.

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14) In order to emphasize, this paper makes the underline.

15) 엄상섭, 앞의 책, 75면 참조.

In the case of *Hawaii vs. DeCastro*<sup>16)</sup>, when the defendant drove on the freeway, he saw a police officer who was pursuing a speeding motorist. The police officer suspected that the defendant was the speeding motorist, so the police officer received his driver's license, as well as defendant's vehicle registration and insurance card, and told the defendant to wait while he returned to his patrol car.

While waiting, the defendant called and told a 911 operator what had happened and was happening. After the defendant told the 911 operator that he wanted to go to his warehouse and the operator could send a policeman there. The operator said, "Okay. When you get to the warehouse, call back." After the defendant told the operator that the officer would chase the defendant if he left, the operator said "Yeah. Just go to the warehouse, and then call back." The defendant continued his conversation with the 911 operator and drove off. The officer pursued the defendant and, with the assistance of other police officers, stopped and arrested him. The defendant was charged and convicted of Resisting an Order to Stop a Motor Vehicle.

DeCastro asserted the mistake of law defense authorized by HRS §702-220<sup>17)</sup> as one of the defenses at trial. The defendant consulted with and relied on the 911 telephone operator's permission to leave the situation, but a 911 operator is not "the public officer or body charged by law with

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16) *Hawaii vs. Robert Decastro*, Intermediate Court of Appeals of Hawaii, Mar. 14, 1996.

17) HRS § 702-220 (1985) states in relevant part as follows:

Ignorance or mistake of law; belief that conduct not legally prohibited. In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

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(3) An ... administrative grant of permission; or

(4) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

responsibility for the interpretation, administration, or enforcement of the law defining the offense” of Resisting an Order to Stop a Motor Vehicle. Therefore, the defendant’s defense with mistake of law is not applicable.

If we compare this DeCastro Case with the Korean Supreme Court Ruling 85Do25, the defendant of 85Do25 Case relied on the reply from the police officer. Nevertheless, the Supreme Court punished him because he did not know the juvenile protection act.

In the viewpoint of general citizen, he had a question whether he was able to sell alcoholic beverage to the juvenile, so he asked the question to police officer. Therefore, we can say that the defendant sincerely tried to get legally correct information.

Reviewing the fact of Cox vs. Louisiana<sup>18)</sup>, the case arose after the picketing of a segregated restaurant on December 14, 1961, in Baton Rouge, Louisiana, led to the arrest of 23 student protesters from Southern University, a black college. The next day, B. Elton Cox, a minister, arranged a protest of 2,000 people at the courthouse where the students were being held. The police agreed to allow the protest as long as it was across the street from the courthouse.

However, the defendant, B. Elton Cox, was convicted of violating a Louisiana statute prohibiting picketing ‘near’ a courthouse with the intent to obstruct justice. The defendant was advised by the city’s highest police officials that a demonstration at the place where it was held was not ‘near’ the courthouse, and to permit him to be convicted for exercising the privilege they told him was available would be to allow a type of entrapment violative of the Due Process Clause.

As a result, Justice Goldberg, writing for the court, overturned his conviction. The crucial part related to mistake of law, is that punishing the

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18) U.S. Supreme Court, Cox vs. Louisiana 379 U.S. 559(1965)

citizen who relied on the city's highest police officer's advice that he is permitted a demonstration, constitutes a type of entrapment, so violates the Due Process Clause. Of course, the Due Process Clause is one of the vital principle of Criminal Procedure, someone could have a question like that there is any relation between the Due Process Clause as one of the criminal 'procedure' principle and the mistake of law as one of defense related to the 'substantial' law. However, the Due Process Clause has a relation to not only the Criminal Procedure Law but also the Constitution.

One of the basis of the principle of "nulla poena sine lege", the principle of legality, is the Article 12 Clause 1 of the Due Process Clause in the Constitution. Therefore, the Due Process Clause is realized by the principle of legality in a substantial aspect and the due process clause in a procedural aspect. In short, the Due Process Clause also has a relation to criminal law as a substantial law.

#### **IV. Suggestion about Interpreting Way of 'Mistake of Law' in the viewpoint of the Principle of Legality**

In the viewpoint of the principle of legality, the article 16 about 'mistake of law' encourages the individual's liberty. If the court interprets narrowly the coverage of the article 16, it causes restrictive interpretation of advantageous provision to the actor; it means disadvantageous restrictive interpretation to the actor, then it violates the principle of legality.

Although the article 16 about mistake of law remains the defective expression in itself, the court should understand the legislative purpose of the article 16 about 'mistake of law' and should not separate 'ignorance of law' from the range of the 'mistake of law'. First, as we confirmed the legislator's intention, the article 16 gives an advantage to the citizen who

did not know his or her action was not permitted by rules or laws and had a reasonable ground for the reliance. In 1953, the legislators of Korean criminal law had already expected that there will be created a large number of laws in the future.<sup>19)</sup> The article 16 gives more powerful effect 'no criminal liability' than the effect of 'reduced criminal liability'. Second, the principle of legality prohibits the restrictive interpretation on the advantageous provisions to the actor. If the court interprets narrowly the favorable provisions to the defendant, it occurs the violation of the principle of legality.

Nevertheless, the Korean Supreme Court has divided ignorance of law from mistake of law. In my opinion, ignorance of law is one of the part of mistake of law. In other words, ignorance of law appertains to the one of the cause of mistake of law. Therefore, the court should focus on whether the actor's mistake has a reasonable ground or not.

Especially, in the viewpoint of a general and plain citizen, although the defendant relied on the information from a public officer who has the authority to administer and interpret the related laws, if the actor should be punished for violating a rule or a provision, the individual's belief on the government including the Administration and the judiciary must disintegrate.

As a result, if the citizen did his or her best endeavors to obtain an accurate information, the court should admit a reasonable ground on the belief, then the court should give the citizen 'no criminal responsibility' as the effect of 'mistake or ignorance of law'.

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19) “각종 형벌법규는 가일층(加一層) 복잡화되는 반면에 일반 민중의 직업상의 노력량이 증가하기만 하는 사회 추세에 비추어 일반 민중으로서는 범법(犯法)이 되는 것인가 아니 되는 것인가를 알기 어려운 경우가 더욱 많아진다는 것을 시인(是認)할 때 법의 부지(不知)는 면책사유가 되지 못한다는 것만으로는 현실과 실정을 무시하는 노릇이다.”라고 하는 엄상섭, 앞의 책, 75면 참조.

## V. Conclusion

Although you believe an official announcement, if you should be punished for violating a certain rule or provision, your confidence in the government including the administration and the judiciary must be broken up. In addition, this modern society is full with a large number of so-called 'administrative criminal law'. Thus, legal experts also feel difficulty knowing all the rules or provisions. Fortunately, the legislators of Korean Criminal Law already had looked out in the modern society, they made the article 16 about mistake of law in the Korean Criminal Code.

Above all, the effect of a mistake of law gives not 'reduced criminal liability' but 'no criminal liability' if the defendant has a reasonable basis of the trust that his or her action is not illegal. Now we need to give an attention to the U. S. Supreme Court's rulings related to the ignorance or mistake of law. If we compare only the strength between 'no criminal liability' and 'reduced criminal responsibility', we can say that no criminal liability is more powerful than reduced criminal responsibility. However, the Korean Supreme Court has diminished the effect of the mistake of law by rejecting the ignorance of law and not examining whether the sensible basis existed or not.

Therefore, the Supreme Court should not exclude 'ignorance of law' from 'mistake of law', but the Supreme Court should examine whether the defendant has a rational basis on his or her reliance on the information or not in detail.

Moreover, the article 16 of mistake of law provides the advantage of 'no criminal liability' for the actor. If a court interprets the applied scope of 'mistake of law' narrowly, this interpretation attitude will occur the violation of the principle of legality because the principle of legality does not permit a restrictive interpretation of an advantageous provision for the actor.

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[Abstract]

## A brief study on mistake of law

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Modern society is full with a large number of so-called 'administrative criminal law'. Legal experts also feel difficulty knowing all the rules or provisions. Fortunately, the legislators of Korean Criminal Law already had looked out in the modern society, they made the article 16 about mistake of law in the Korean Criminal Code.

However, the Korean Supreme Court has diminished the effect of the mistake of law by rejecting the ignorance of law and not examining whether the sensible basis existed or not.

Therefore, the Supreme Court should not exclude 'ignorance of law' from 'mistake of law', but the Supreme Court should examine whether the defendant has a rational basis on his or her reliance on the information or not in detail.

Moreover, the article 16 of mistake of law provides the advantage of 'no criminal liability' for the actor. If a court interprets the applied scope of 'mistake of law' narrowly, this interpretation attitude will occur the violation of the principle of legality because the principle of legality does not permit a restrictive interpretation of an advantageous provision for the actor.

**Key words** : mistake of law, ignorance of law, the principle of legality,  
Due Process