A Probe into the Localization of the Malicious Complementary Age Rule

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***Abstract**: In recent years, the trend of juvenile delinquency is becoming more and more obvious, and the discussion on the reconstruction of the age system of criminal responsibility in China is becoming increasingly fierce. For the plight of the age system of criminal responsibility in China, the introduction of the "malicious supplement age" rule can further clarify the concept of juvenile criminal legislation in China, which is conducive to the improvement of the age system of criminal responsibility in China, and can better guarantee the value requirements of realizing the fairness and justice of criminal law. The introduction of the "malicious supplement age" rule should determine the scope of application, the applicable subject, and the judgment standard of "malicious" to prevent judicial arbitrary behavior. At the same time, it should also limit the necessary standards for juvenile punishment, so as to achieve the fundamental purpose of effectively controlling juvenile delinquency and effectively protecting the legitimate rights and interests of minors.*

***Key words**: Malicious supplementary age rule; Minor; Age of criminal responsibility*

Statement of Problem

On October 20, 2019, a 10-year-old girl Wang in Dalian was involved in an accident. After receiving the police, the Dalian Public Security Bureau worked overnight. At about 23 o'clock on the same day, it was found that Cai (Male, 2006 Born in January, 13 years old) is suspected of committing a major crime. After arriving at the case, Cai confessed truthfully the fact that he killed Wang. When the tragedy happened, Cai, on the grounds that he needed help, tricked Wang, who was passing by at the end of his remedial art class, into his home, and hugged Wang, who wanted to have sex with Wang. After being refused, he beat Wang's head and face, and pressed him to the ground, and then pinched Wang's neck with his hand. When Wang lost her resistance, he worried that Wang would tell his behavior, so he stabbed Wang's upper body five or six times. After confirming Wang's death, Wang's body was abandoned in the bushes opposite the residence. When the body was moved, Wang's legs were in contact with the ground, causing her pants to slip off. Later, when the family found Wang's body, her trousers had been faded below the knee, and there was no clothes on the front chest, and the coat was taken off behind her. There are many stab wounds on the body, including the back of the head, neck and chest. There were two garbage bags with bricks and broken tiles inside to cover up the body. Compared with CAI's cruel means of murder, what makes people more shocked is that after the murder, he can move the body calmly, clean up the scene calmly, pretend to inquire calmly, and analyze the legal age calmly in the wechat group. In recent years, the trend of juvenile delinquency is becoming more and more obvious. The cases of serious violence such as murder and injury committed by minors under 14 years old by

cruel means are frequently reported in the newspapers. In 2013, a 13-year-old girl in Guangxi, because her classmate was more beautiful than herself, brutally killed her classmate and cut off her head and limbs. In July 2017, a boy pranked a 2-year-old girl into the elevator and pressed the top button. It happened that the top guardrail was damaged, and the little girl walked over and fell to her death. In 2018, 6 minors in Shenmu City, Shaanxi Province forced a 15-year-old girl into prostitution. Because the client was not satisfied, they beat the girl for several hours, causing her death, and then dismembered the girl's body and abandoned it in the wilderness. In December 2018, in just one month, there were two shocking cases of family killing in Hunan Province, from the case of "12-year-old boy killing his mother" to "13-year-old student killing parents".

In these cases, the integrity of the juvenile crime process, cruel means, serious results, subvert the public's opinion on this part of the juvenile in this age group should have the ability to identify and control, caused an outcry of public opinion. However, according to the provisions of the second paragraph of Article 17 of the criminal law, if the perpetrator is under the age of 14 years old and has not reached the legal age of criminal responsibility, he shall not be investigated for criminal responsibility according to law. It is because the age of criminal responsibility is not reached, the current law is powerless in dealing with the "killer" in these malignant cases. During the two sessions in 2016, a number of NPC deputies had a heated discussion on this issue. Weizhong Shi, deputy director of the office of juvenile procuratorial work of the Supreme People's Procuratorate, also clearly stated at the press conference on the theme of "30 years of juvenile procuratorial work" held by the Supreme People's Procuratorate, "whether China needs to reduce the age of criminal responsibility should go through a lot of practical demonstration and theoretical research." It should be pointed out that juvenile delinquency, including the problem of juvenile delinquency, is a worldwide problem. In the long-term historical practice, various countries have constantly explored and improved, and formed their own unique institutional solutions. Therefore, in the process of dealing with the problem of juvenile delinquency and demonstrating whether the age of criminal responsibility should be reduced, it is a direction to learn from the mature and effective experience of relevant countries. In this regard, some scholars and judicial practitioners in our country have proposed that the Malice Supplies The Age rule of the Common Law System (Malice Supplies The Age) can be introduced. Regard it as a supplementary applicable rule for determining the age of criminal responsibility for specific juveniles, in order to meet the requirements of the times in the treatment of juvenile crimes.

The Legitimacy of Maliciously Supplementing the Localization of Age Rules

The Meaning that Juvenile Criminal Legislation Supposed to Include

With the establishment and strengthening of the principle of "maximizing the rights and interests of minors" in the International Children's Convention, the Law on the Prevention of Juvenile Delinquency and the Law on the Protection of Juveniles, my country's current treatment of juvenile crimes It has always upheld the principle of maximum tolerance and distorted and misinterpreted the criminal legislation and judicial concepts of minor recoverability currently promoted in China. Punishing crimes and protecting human rights are the inherent requirements of the basic tasks of our criminal law. Therefore, a reasonable criminal law system design should not only ensure the effective attack on criminal acts, but also effectively protect the

legitimate rights and interests of the perpetrator. In the aspect of system design or legislation, legislators need to balance the fight against crime and the protection of human rights. Although China's criminal policy tends to protect and educate minors, legislators should also consider the function of criminal law in cracking down on and punishing crimes. However, the existing rigid age system of criminal responsibility in China gives judges very limited discretion. The value balance between punishing crimes and protecting human rights has been established in the legislative stage, which makes the fairness and justice of individual cases unable to be carried out in judicial activities. In the process of system modification and improvement, the balance achieved by both parties after game is an important standard to test the feasibility of the rules. From the perspective of the basic task of the criminal law, to follow and carry out the education is given priority to, punishment is complementary principle of minor crime place is broken and generous, preferential treatment and other special protective policies, the current judicial practice and the basic task of the criminal law on crime and guarantee human rights to be opposite, this is the principle of "Tolerant not to condone" defy. The goal of juvenile criminal justice punishment is not only one-dimensional punishment or education, or a single discipline or restoration, but both punishment and education, discipline and restoration. The "malicious supplementing age" rule redistributes rights and obligations through legislative activities, and uses the flexibility and professionalism of judicial actions to try to resolve the contradiction between criminal law in criminal punishment and human rights protection.

The Important Supplement to the Age Rigid System of Criminal Responsibility

There are two modes of operation in determining the age of criminal responsibility for minors in countries around the world: The first is the age range determination method. Take Russia and China as typical representatives. Article 20 of the criminal code of the Russian Federation promulgated in 1996 stipulates that minors between 14 and 16 years old shall bear criminal responsibility only for three types of crimes; Article 17 (2) of China's criminal law stipulates that minors between 14 and 16 years old shall bear criminal responsibility only for eight types of acts. The second is the "malicious supplement age" rule adopted by most countries. Taking the common law countries as the representative, the minors in a certain age range can be equally aware of the serious harmful consequences of their behaviors if the relevant authorities come to the conclusion that their minds are quite mature when they act according to the scientific appraisal method. If they have the corresponding willpower, control ability and identification ability, it is proved that their "malicious" is sufficient. The biggest advantage of the malicious supplementary age rule is that it has a certain degree of flexibility. It does not necessarily stipulate whether a minor needs to bear criminal responsibility, but is proved by corresponding evidence. Its advantages lie in: firstly, people's growth is a gradual process with differences, which is not a sudden recognition and control ability in a certain day. No matter how many years old the minimum criminal age is, it can not objectively reflect the psychological maturity of minors. At this time, the rule of malicious supplement age can make up for this rigid system. Secondly, due to the vast territory and unbalanced regional development in China, the growth and maturity of young people are not the same. Adopting the same age rule of criminal responsibility is not conducive to the realization of substantive equality in law. Thirdly, the society is moving, and the law can not always reflect the changes of the society, so the legal provisions are usually lagging behind, and the malicious supplement age rule can make up for the lag of the law through dynamic balance.

The Necessary Requirement to Realize the Fairness and Justice of Criminal Law

Fairness and justice is an important symbol to measure the development of civilization of a country or society. Equality before the law is the premise and foundation of realizing fairness and justice. In the increasing number of juvenile delinquency cases, when both the victim and the perpetrator are minors in a weak position, the victims are more vulnerable and need the help of law. Their rights and demands should be protected. Under my country’s current age system for criminal responsibility, minors who have not reached the age of punishment do not need to bear criminal responsibility. The legal interests of the victim have been illegally violated without comfort, and justice cannot be done. This is a phenomenon that hinders the realization of fairness , The law should be revised and updated, otherwise it will cause harm to the psychology of the victimized minors, and even create a vicious circle of minor crimes. For the society, it is not conducive to the establishment of legal credibility and the development of a society ruled by law. At the same time, for the actor himself, excessive protection will lead to the idea that "killing is no more than this", and losing the educational significance of law. In addition, for the same crime just over 14 years old juvenile delinquents, there will be differential treatment, unfair. The introduction of malicious supplement age rule can eliminate this kind of injustice. For the young minors like the above-mentioned, they can be subject to the punishment, and can also eliminate the criminal ideas of some minors who use the law to avoid punishment, which has a certain significance of prevention and education. This is not a violation of humanitarianism, but a strong response to the social desire for fairness and justice, and is the embodiment of China's legal fairness and justice.

Specific Measures for the Localization of Rules

For the localization of maliciously supplementing age rules in my country, not only theoretical basis is needed, but also specific system design schemes are needed, so that it is more convenient to apply and practice to test whether the system is suitable for my country.

The Criterion of "Malice"

As a special standard for the determination of "malice", the mode should be higher than the validity judgment of other criminal evidence, so as to prevent the abstract expansion of "malice" from violating the realization of the criminal policy value of "education first, punishment supplemented". Based on the legislative experience of different countries and the comprehensive research in judicial practice, the judgment of "malice" should reflect the following aspects. First, the identification technology assisted by malicious identification is relatively advanced and scientific, and malicious identification is subjectively abstract. Therefore, to clarify the conscious activity of the subjective mentality, it is inseparable from the double verification of scientific identification equipment and experience summary to prevent the existence of zero error judgment. Secondly, the application of "malicious supplement age" rule can not hinder the efficiency of trial justice, otherwise the cumbersome procedure will reduce the substantive justice brought by the new idea of the rule. Finally, the arbitrary nature of malicious identification should be restricted to increase the operating space of judges, so as to provide a feasible normative procedural model for judges and judicial technicians to identify malicious nature. Therefore, in order to enhance the authority and persuasion of the

amendment of the criminal legislation of "malicious supplement age" rule, it is necessary to construct a special social investigation system of minors' personality. In the regulation adjustment of Article 17 of the criminal law, the investigation of personality system is the legislative determination of personal danger as a conviction factor, which is consistent with the decriminalization emphasis of Article 13 of the criminal law that "if the circumstances are obviously minor and the harm is not serious, it is not considered as a crime". At the same time, it also encourages minors to repent actively after the "malicious" investigation procedure, so as to provide some young minors with less social impact, outstanding contributions, first offenders and strong plasticity to reform. However, it is necessary to keep the contents of the personality survey of minors confidential, so as to protect their fragile psychology, make up for their trauma, and make them return to the campus as soon as possible.

Applicable Subject

Meijin Li, vice president of the society for the prevention of juvenile delinquency and professor of the Department of criminal psychology of the people's Public Security University of China, said at the Forum on "for tomorrow - prevention of juvenile delinquency" held in Shanghai, the average age of juvenile violence in China is 12.2 years old, and 13-14 years old is the high-frequency age group of bad behavior. Students aged 11 to 14 have the willpower and control ability to bear criminal responsibility. In order to protect the rights and interests of vulnerable groups such as the injured minors, it is necessary to use the "malicious supplement age" rule to prevent the recurrence of such incidents. According to scholars' research, human brain regulation ability will be improved with the impact of multiple social communication information. In particular, the brain regulation ability of 11 to 14 year olds is different from that in the late 1970s. Under the impact of multiple communication information, the brain regulation ability makes the body externalization more powerful, and the brain excitement is high, which leads to a series of vicious riots. Secondly, minors aged 11 to 14 have a high degree of imitation ability. When minors over 14 years old commit vicious acts in order to satisfy their inner stimulation, the minors at this stage will try their best to experience the stimulation, but eventually they will be exempted from criminal sanctions because of the excessive expansion of the concept of recoverable criminal legislation. Therefore, according to the relevant data, teenagers generally begin to have bad behaviors from the age of 11 and 12, and they tend to the society and have illegal behaviors at the age of 13 and 14. Considering the comprehensive quality and characteristics of China's minors, 11-year-old minors have the ability to commit crimes in terms of physical function, and their understanding of society is basically formed, and they can distinguish right from wrong. Therefore, it is more in line with the physical and mental characteristics of minors and the practical needs of judicial practice to apply the "malicious supplement age" rule to minors aged 11 to 14. At the same time, China's criminal law stipulates that 14 to 16 years old is the relative age to bear criminal responsibility, only for eight major crimes. Defining the upper limit at 14 years old is not a revision of the original law, but a refinement and supplement on the basis of it, which is conducive to maintaining the stability of the law and avoiding damaging the authority of the law.

Scope of Application

Juveniles aged 14 to 16 only bear criminal responsibility for the eight typical felonies stipulated in China's criminal law. According to the legal principle that weight lifting should be made light of, minors aged 11 to 14

are not as mature as those aged 14 to 16. Therefore, their scope of application should not be extended to these eight items. Secondly, from the perspective of the legal interests of crime, the eight crimes have infringed on the legal interests of life and health of others. As the two highest legal interests, they should be given the greatest attention and protection, and each crime can not rule out the possibility of the implementation of minors in this age group. It is worth pointing out that drug trafficking for minors of this age group, due to the limitation of cognitive level, often lacks the necessary subjective understanding of the seriousness of the crime, and it is difficult to identify the subjective malignant factors. Considering the modesty of criminal law, it should not be included in the scope of application. At the same time, only when the victim's right to life and health is infringed upon when the victim is seriously injured or dead, the rule of "malicious supplement age" should be applied. This is not only a supplement to the existing criminal policy, but also an effective continuation of the basic policy of "education first, punishment supplemented".

Penalty Standard

According to the seriousness of the circumstances, the standard of punishment can be set as control and fixed-term imprisonment of not less than three years but not more than seven years. First of all, because minors under the age of 11 to 14 generally do not have personal property, so the property penalty in the supplementary punishment: confiscation of property and fine are not included, and the resulting property loss can be filed by the victim with a criminal incidental civil action to claim compensation from the minor's guardian. At the same time, according to relevant judicial interpretations, the death penalty, life imprisonment and deprivation of political rights are generally not applicable to minors. This is to protect human rights and maintain the modest nature of the criminal law. Since deportation applies to foreigners, it is not taken into account. The reasons for not applying detention and fixed-term imprisonment of less than three years are as follows: The circumstances of this type of crime are relatively minor, and lighter or mitigated punishment can be considered. Secondly, according to Lombroso’s statement that cross-infection makes first offenders eventually become repeat offenders and repeat offenders and the characteristics of minors’ vulnerability to infection, such short-term free punishment may cause minors to be “cross-infected”. A period of time between minors and adult criminals may affect the healthy formation of personality. Not only does it fail to correct the mind and body of minors, but it also affects the formation of their correct concepts, which ultimately leads to the consequences of turning the cart before the horse. Control is adopted because: my country’s control generally takes the form of community corrections. For minors, it is undoubtedly the most suitable punishment for their physical and mental growth. Therefore, the circumstances are relatively minor and do not need to be sentenced to more than three years in prison Minors can be rectified by taking control measures.

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