

Analysis on Criminal Law Circumvention in Corruption Crime

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Abstract: At present, criminal law circumvention exists in China's corruption crime field. This is because legal theory cycle fails to reach a consensus in such aspects as legislation and judicial handling, or because legislative regulation content is chaotic. Of course, criminal law circumvention behavior dominated by corruption crime cannot be simply understood as a new corruption means, and the specific and correct criminal disposal countermeasures should be proposed. Hence, it is necessary to first clarify the concepts about criminal law circumvention in corruption crime and then look back current situation of legislation and judicature of criminal law circumvention in corruption crime. In the end, the effective legal construction path is put forward in this paper for criminal law circumvention in corruption crime.

1. Introduction

In recent years, the work of combating corruption and upholding integrity as well as regulating formalism, bureaucratism, hedonism and extravagance advocated by General Secretary Xi Jinping has proceeded like a raging fire. National anti-corruption team continues to increase inspection force and range to overall restrain corruption phenomenon. For criminal law itself, it still has some loopholes in the aspects of anti-corruption, punishment, legislation and judicature. So, it is necessary to carry out legal revision and adjustment of judicial interpretation form (even adjustment of crime circle) so as to furthest change adverse space environment for criminal law circumvention phenomenon. This is very critical for solving criminal law circumvention problem in corruption crime.

2. Basic concept connotation of criminal law circumvention in corruption crime

2.1 Criminal law circumvention and legal circumvention

In practice, the term "criminal law circumvention" does not exist in China's criminal legislation. But from the perspective of legal theory, there is the term "criminal law circumvention". The legal term stemmed from the text about legal act of fraud written by a jurist in ancient Rome. He mentioned that, "Those engaging in the behaviors prohibited by laws violate the laws. Although they do not violate the text of laws, they violate the objective of laws". About this argument, international discussion is still hot. But the discussion on legal circumvention in the international jurisprudential circle tends to the field of private international law. It involves different selection and applicability problems of laws in different countries. Even some countries propose private dispute settlement should avoid the analysis of national law applicability level. In the final analysis, there is no consistent cognitive conclusion for criminal law circumvention and legal circumvention, so the basic concept connotation of criminal law circumvention can extend and change.

2.2 Extension of connotation of criminal law circumvention

Criminal law circumvention is not just limited to criminal law itself. It should continuously extend. At present, some foreign scholars consider "criminal law circumvention should be deemed as some special connection factors for no crime, minor crime, light punishment or no punishment deliberately

crated by relevant criminal persons. These special connection factors can help the defendant evade grave crime and even crimination, finally commute a sentence and even be judged no guilt.” Some scholars think “criminal law circumvention should help the criminal suspect avoid criminal liability according to the loopholes of legal provisions.” This explicitly discloses major characteristic of criminal law circumvention. Criminal suspects, defendants and criminal liability crimes are also listed in the category of criminal law circumvention. This invisibly expands the boundary of criminal law circumvention and causes the core concept of criminal law circumvention becomes a new tool used by the doers to draw on advantages and avoid disadvantages. Meanwhile, the effect of criminal law circumvention becomes obvious. In such case, criminal doers or criminal suspects can skillfully gain the judicial effect of being acquitted of a charge through changing or linking some criminal law circumvention factors, which causes judgment result runs counter to judicial wish. So, criminal law circumvention deserves the notice of the industry in the aspect of legal loophole utilization.

2.3 Essence of criminal law circumvention

The essence of criminal law circumvention is that natural person individual or organization with criminal capacity effectively evades criminal sanction, skillfully utilizes all kinds of criminal law loopholes to change or create some rational behavior which runs counter to the fact used for convicting someone, makes conviction unable to be done and meets innocent treatment. In accordance with the content about theory of criminal law, criminal law loopholes cover real loophole and non-real loophole. Real loophole means the criminal law should give the normative type of criminal law and define the situations where loopholes form. Non-real loophole refers to the situation of criminal law which is limited by language feature, is based on new case type and may easily cause norms and the scope suffer limits. For corruption criminals, it is very important to seize the criminal law loophole which results from the negligence of legislation consideration. Based on the principles of criminal law, they utilize criminal law loophole to make sure their criminal behaviors innocent and win judicial interpretation space. So, this is also the essential reason for criminal law circumvention in corruption crime.

Of course, from the perspective of practice, as the means and types of corruption crimes become richer and richer, they are gradually mixed with criminal law circumvention behaviors. Both gradually form the relationship of inclusion and being included. Corruption criminals hope to evade criminal act of criminal law, not just including pure formal legal liability escape, but also containing crime circumvention by applying criminal law loophole. Such behavior is harmful to the society, but it itself does not own any criminal illegality [1].

3. Current situation of legislation and judicature about criminal law circumvention in corruption crime

On the whole, China’s legislation and judicature about criminal law circumvention in corruption crime have defects. which results in wanton behaviors of corruption crime. To be specific, inadequate legislation leads to criminal law circumvention in corruption crime, which is the key. In Criminal Law, the previous amendments on the conditions of corruption crime stress the interaction between legal revision and revision background. In other words, the legislative body pays great attention to evasion of looking for legal loopholes by the doers, in the hope of reducing loopholes and improving circumvention difficulty. However, in practice, new criminal law circumvention behaviors often appear, because the development of China’s criminal legislation lags behind. The judicial practice department cannot effectively reduce the space of criminal law circumvention behaviors and fails to thoroughly solve criminal law circumvention in corruption crime. Thus, criminal law circumvention behaviors emerge repeatedly. Based on the current situation of relevant legislation and judicature, there are mainly 3 problems in criminal law circumvention in corruption crime.

3.1 Revision mode of Criminal Law

In China's Criminal Law, the conditions of corruption crime set by lawmakers should follow the fundamental legislation principles and ensure inter-coordination among articles of law. But, such inter-coordination is ignored in Criminal Law. For example, the content about inter-coordination among articles of Criminal Law is added in Article 388 of Amendment to Criminal Law (VII), but this article fails to explicitly specify independent statutory sentence problem. Of course, there is also lack of independent accusation setting. Thus, the setting of independent accusation articles is not proper enough. On the other hand, Criminal Law is not strict enough for subject identity provisions of bribery crime, which forms the contradiction with Article 388 of Amendment to Criminal Law (VII).

3.2 Incrimination scope of corruption crime behaviors in Criminal Law

In China's Criminal Law, the object of crime is the foundation of setting incrimination conditions of corruption crime behaviors. In practice, this setting lags behind social reality and development pace of legal industry. For example, the explicit indication about "financial" requirements set for bribery crime is given in Criminal Law. It hopes to expand the problem of property interests through relevant judicial interpretation and achieve bribery crime incrimination based on non-property interest behavior and money encirclement transaction behavior. Lawmakers still need to consider the object definition for bribery crime and financial definition. This problem is mainly reflected in whether the object of bribery crime is defined as property and whether national public power infringed by bribery crime cannot be bought. So, the scope of bribery should not be only limited to finance or property interests, but should meet personal desired interests and needs. Under the condition where obvious changes happen on the basis of social reality, Criminal Law should be combined to discuss the basic object scope and adjustment measures of bribe-taking behavior incrimination. Of course, we must admit that, it is because of the existence of criminal law circumvention that relatively wide advantageous conditions are provided for various loopholes in Criminal Law. This deserves introspection of the judicial circle.

3.3 Incrimination threshold setting by judiciary authority

The judiciary authority specially promotes incrimination threshold in order to evade frequent occurrence of bribery crime behavior. Such improper threshold promotion stimulates the shrinkage of crime circle to certain degree. "Appointment in advance" norms are set in the Reply on how to handle the behaviors of national staffs who take advantage of their positions to seek interests for others so as to accept properties after their retirement issued by the Supreme People's Court. It indicates that the behavior of accepting the properties of entrusting person after retirement also forms bribery crime. The promotion of incrimination threshold fails to restrain corruption crime behavior. Although the act of accepting bribes appointed in advance is restricted, option corruption crime behavior which is not agreed in advance is escaped. Thus, although the promotion of incrimination threshold amends some legislation regulations and evade some criminal law circumvention behaviors, improper shrinkage of bribery crime scope makes another corruption crime behavior happen.

4. Exploration of future solution to criminal law circumvention in corruption crime

4.1 To effectively adjust and reduce breeding environment of criminal law circumvention behavior by innovative methods

In the future, more solutions should be sought for criminal law circumvention in corruption crime, and large-area expansion of the space for criminal law circumvention behavior should be avoided. It is required to start from experience and theoreticism and combine constructive rationalism to generate the new legislation thought. To be specific, two points should be included. Firstly, progressive trial and error method should be implemented. Secondly, dogmatic thorough planning should be done well. The two amendment behaviors for criminal law circumvention can start from the

perspective of value rationality to observe the criminal law construction process for corruption crime. The criminal law for corruption behavior may be set to optimize the boundary. Meanwhile, the above two methods are combined to effectively control criminal law circumvention behavior. The specific background for corruption crime and crime content may be considered by referring to the evaluation countermeasure. Then, it is necessary to consider how to give feasible solutions.

4.2 To add new crimes to construct corruption crime cluster

Adding new crimes can effectively prevent criminal law circumvention behavior of corruption crime. This perspective is very novel. At present, some scholars also propose relevant problems, i.e. accusation unification behavior proposed by focusing on integration of bribery crime content in Chapter 8 of Criminal Law. In other words, traditional bribery crime and unit bribery crime are integrated by the rules of Criminal Law, called “bribery crime based on positions”. Besides, the crime of offering bribes, crime of offering bribes to units and unit crime of offering bribes may be also uniformly called “bribery crime based on positions”. Such accusation supplementation method is very innovative. But strictly speaking, it does not conform to theoretical and practical requirements proposed in economics of law. Even the problem of waste of legislation resources may occur.

The current researches show that, the legality of new accusation system may be confirmed through comparing the new accusation system and confirming it conforms to reality. The propose of adding new accusation is to make sure it and the existing system coordinate with each other. For example, bribery crime after retirement without “agreement in advance” mentioned above may be regulated according to bribery crime content in Criminal Law. Even criminal law circumvention crime may be directly proposed in Criminal Law. However, lots of researches and investigations are required to set and supplement new crimes. The workload is very heavy, and mistakes may occur easily. Long-time demonstration is required. In practice, such idea is to materialize constitutive elements of crime. Infinite boundary expansion function of Criminal Law is rationally utilized, in the hope of ensuring legality and humanity of Criminal Law and safeguarding human rights.

4.3 To adjust constitutive elements of criminal law circumvention in corruption crime by legislative techniques

Rational utilization of legislative techniques may effectively adjust constitutive elements of criminal law circumvention in corruption crime. In other words, judicial interpretation may be used to deal with criminal law circumvention. The situations where behavior types cannot be corresponded to Criminal Law effectively exist. This means large loopholes still exist in Criminal Law. In such case, it is required to enhance the attention to criminal law interpretation and improve incompleteness, uncertainty and thoughtlessness of Criminal Law through maintaining its authority. Firstly, it requires lawmakers to repair criminal law regulation loopholes in corruption crime in time so as to avoid the huge loophole in criminal law circumvention. It requires Criminal Law to adopt rational and effective means of interpretation, regulate right limit of criminal law through deeply exploring the content of Criminal Law and unify court judgment standards. Besides, some typical cases and bulletin cases are guided by judicial interpretation of criminal law circumvention in corruption crime.

Secondly, some reasonable interpretation methods should be rationally applied to highlight incrimination effect of corruption crime cases. In addition, it is required to combine articles of Criminal Law to propose innocent disposal and guilt judging criteria, create larger judicial interpretation space for Criminal Law and interpret criminal law circumvention in corruption crime. In other words, rational form interpretation should be adopted to judge whether criminal law circumvention behavior accords with incrimination conditions and whether disputes exist in criminal law circumvention behavior. This is also the key influencing conviction behavior of Criminal Law.

5. Conclusions

Starting from the concept of criminal law circumvention in corruption crime in Criminal Law and interpretation of current situation of legislation and judicial act, this paper mainly interprets the ways

to solve criminal law circumvention in corruption crime by Criminal Law, in the hope of changing negligence and loopholes of Criminal Law in handling criminal law circumvention in corruption crime, improving preciseness of judicial legislation and laying a foundation for solving corruption crime problem in China.

References

- [1] Ge Chenliang, Study on Criminal Law Circumvention in Corruption Crime, *Academic Journal of Zhongzhou*, 2016(6):57-61.
- [2] Chen Sheng, Study on the Difficult Problems in Judicial Cognizance of Bribery Crime, Anhui University, 2015.
- [3] Xian Lifang, Study on Subject of Corruption Crime Behavior, Fudan University, 2008.