

The significance and scope of application of the principle of legality in criminal law

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Abstract: This article discusses the significance and scope of application of the principle of legality for crimes and punishments in China. With the development of China's reform and opening up, as well as the socialist market economy, and the strengthening of the foundation of the market economy, it is necessary to further establish and improve the principle of legality in criminal law from the perspective of protecting human rights and limiting the country's punishment power.

1. The significance of the principle of statutory punishment for crimes in China

1.1 The formal level of the principle of legality in crime and punishment

The connotation of the principle of legality in contemporary China lies in the legal form, mainly manifested as legal textualism, legal strictness, and legal exclusivism.

1.1.1 Legal Textualism

The form of contemporary Chinese law is mainly written normative legal documents. Customary law, national policies, judicial interpretation and guiding cases would be also generally effective. According to Article 3 of China's Criminal Law, if the law explicitly stipulates that it is a criminal act, it shall be convicted and punished in accordance with the law; if the law does not explicitly stipulate that it is a criminal act, it shall not be convicted and punished. This is a legislative expression of the principle of legality in crime and punishment.

1.1.2. Strictness of Law

From the perspective of the formal source of law, law in China specifically refers to normative legal documents formulated by the National People's Congress and its Standing Committee that would have lower effectiveness than the Constitution. According to the spirit of the Constitution, laws are divided into basic laws and laws other than basic laws. Although there is no significant difference in effectiveness between the two, the scope and subject of adjustment would be different. And basic laws regulate basic issues such as criminal, civil, and state institutions, and are formulated and modified by the National People's Congress. Laws other than basic laws are

formulated and modified by the Standing Committee of the National People's Congress. During the period when the National People's Congress is not in session, the Standing Committee of the National People's Congress can amend basic laws such as criminal and civil laws change, but shall not conflict with the basic principles of the law[1].

1.1.3. Legal exclusivism

In China, the relative legal exclusivism required by the principle of a legally prescribed punishment for a specified crime actually contains two meanings. On the one hand, it is only relative to the laws and regulations outside the criminal code. Only the criminal law has the right to create crimes and penalties. The concept of crime, charges, types of punishment, and statutory punishment are all set by the criminal law. Other laws, administrative regulations, and judicial interpretation have no right to create crimes and penalties. There are only specific provisions for the relevant crimes stipulated in the criminal law, and these provisions have supplementary functions.

1.2 The Value Level of the Principle of Legality of Crime and Punishment

1.2.1 Safeguarding human rights is the highest value

The development of Chinese law has evolved from the ancient state based and family based approaches to the diversified development of state based, social based, ethnic based, and individual based approaches in modern times. Therefore, the value goals pursued by the principle of legality in Chinese criminal law are not entirely the same as those of Western countries, reflecting their own characteristics of the times and ethnic groups[2]. However, as long as a legally prescribed punishment is established, it objectively limits the legislative and judicial powers, and has the significance and value of safeguarding human rights.

1.2.2. Beneficial to the defendant is the basic spirit

The distinction between the positive principle of legality and the negative principle of legality reflects the fact that China attaches great importance to the protection function in criminal legislation. However, the expansion of the power of punishment should be confined to the "cage" of legality, rather than arbitrary expansion. In addition, the content of several amendments to the revised Criminal Law generally moves towards limiting punishment, rights, and protecting human rights. Therefore, safeguarding human rights is the primary value of the principle of legality in contemporary China.

1.3 The substantive level of the principle of legality in crime and punishment

1.3.1. Clarification and appropriateness of criminal law

The appropriateness of the content of criminal laws and regulations would include two requirements. Firstly, it is about prohibiting the punishment of improper punishment. Then the second is to prohibit the cruel and uneven punishment. If the formal aspect of the early principle of legality for crimes and punishments focused on constraining judicial power, then the substantive aspect of the modern principle of legality for crimes and punishments mainly lies in limiting legislative power, full of distrust of legislative power.

1.3.2. Humanistic criminal policy of legislation

Criminal policy includes both criminal policy of legislation and criminal justice policy. The

guiding function of the principle of legality in criminal policy of legislation inevitably requires that the humanistic value choice in criminal policy of legislation cannot be ignored. Only in this way can the restriction of legislative power by the principle of legality be implemented. Otherwise, criminal legislative policies are unreasonable, and the specific implementation of the principle of legality in criminal law is also difficult to achieve substantive and formal rationality.

1.4 Procedural level of the principle of legality for crimes and punishments

1.4.1 Standardized and unified power of criminal judicial interpretation

It is necessary for the judicial organ to interpret the law in the process of applying the law. However, if the judicial interpretation is used to guide judicial application, it will be a violation of the principle of a legally prescribed punishment for a specified crime, a violation of the requirements of democracy, a violation of the legislative power of the National People's Congress, and a violation of the basic requirements of the Constitution[3]. At the same time, the normative interpretation of the application of law is assigned to multiple departments to exercise, and even the internal normative documents or meeting minutes formulated by departments without the power of judicial interpretation become the basis for judicial application, which undermines the unity of the legal system, which is neither serious nor appropriate for human rights protection. Therefore, it is a natural choice to unify the power of judicial interpretation to be exercised by the Supreme People's Court, which also conforms to the practice of various countries.

1.4.2. Judicial organs independently exercise judicial power in accordance with the law

Under the principle of legality, only when the judicial subject has autonomy can they make a correct judgment on whether an act constitutes a crime strictly in accordance with legal provisions. Ensuring the independent and fair exercise of judicial and prosecutorial powers by judicial organs in accordance with the law is an inevitable requirement for ensuring that judicial organs carry out convictions and sentencing in accordance with the law.

1.4.3. Strengthening the Role of Defense in Criminal Justice

Starting from the value level of the principle of legality in crime and punishment, the primary and highest values should guarantee human rights, fully respect the right of the prosecution and defense parties to speak, give equal opportunities to both parties, and allow both parties to fully state their understanding of the law. Especially, it is very important to fully value the opinions of the defense party (defense lawyer) on the application of the law, and comprehensively consider the severity of the offense and the reasons for the offense. The process of debate is actually a process of breaking the monopoly of judges on the interpretation of criminal law and expanding the subject of interpretation. It is the responsibility of the state and society to fully protect the rights and interests of the defense, especially the defense lawyers, in criminal justice activities, and to increase the rate of criminal defense, so as to make every suspect or defendant receive effective and timely professional defense.

2. Clarification of the scope and degree of punishment

2.1. Clarity of Criminal Legislation

Clarity is first and foremost a requirement for criminal legislation and a limitation on opposing legal rights. The provisions of criminal law must clearly tell people what is prohibited, so that

everyone can regulate their behavior accordingly. The clarity of criminal legislation includes the clarity of applicable conditions and legal consequences (statutory punishment). Because the clarity of criminal law can not only make the judicial norms clear, thereby limiting the power of judicial organs, which is conducive to safeguarding the freedom of citizens, but also make the behavioral norms clear, thus making it clear which behaviors are prohibited by criminal law, which is conducive to protecting legal interests.

2.1.1 Clarification of constitutive elements of a crime

The clarity of the constitutive elements of a crime (the conditions for the establishment of a crime) indicates a basic requirement: the legal provisions stipulating a crime must be clear, so that people can accurately understand the content of the illegal behavior, accurately determine the scope of criminal and non-criminal behavior, and ensure that behaviors that are not explicitly stipulated in the standard will not become the object of application of the standard. Realizing the clarity of criminal law is a common task of criminal legislation, criminal justice, and criminal law theory.

2.1.2 Clarification of statutory penalties

Statutory punishments must have specific types and degrees of punishment, and absolute indefinite sentences are prohibited. If the provisions of the Criminal Code prohibit a certain behavior, but do not specify the consequences of the punishment for the behavior, according to the principle that there is no crime without a statutory punishment, the behavior is not a crime. Therefore, criminal laws of different eras usually stipulate specific types and degrees of punishment for crimes.

The provisions on the main penalty in the specific provisions of the Criminal Law of our country meet the requirements of clarity, but the general and specific provisions of the Criminal Law lack clarity in terms of fines and confiscation of property[4], resulting in excessive discretion of judges, which is not conducive to protecting the legitimate rights and interests of the defendant, but also undermines the authority of the Criminal Law. From the perspective of the development direction of criminal legislation, a relatively fixed amount of fines or a certain proportion of fines should be stipulated. Confiscation of property should be limited to the confiscation of a portion of the property (such as no more than 60% of the total property), and it is not advisable to confiscate the entire property.

2.2 Clarity of Criminal Justice

2.2.1 Clarity of judicial interpretation and guiding cases

The judicial interpretation is different from the judgment, but a normative document, and even adopts the same expression as the criminal law provisions, and has legal effect. Therefore, from the perspective of judicial norms, if the judicial interpretation is not clear, it will inevitably cause confusion to the lower criminal judicial organs. From the perspective of code of conduct, citizens may understand the nature of relevant acts by reading the judicial interpretation, thus deciding whether to implement relevant acts. Therefore, if the judicial interpretation is not clear, it may also lead to national confusion. In this case, judicial interpretation must be clear. The judicial interpretation shall not cause the judicial personnel to understand its content in the opposite direction, or to be difficult or unable to determine its basic meaning, or to determine the scope of its terms. Based on the same reasons, the key points and reasons for judging in guiding cases must also be consistent and clear.

2.2.2 Clarification of Judgments and Complaints

Citizens often learn about the content of criminal law through indictments and judgments (including criminal rulings). The law is not expressed by clear provisions, but is clearly displayed in the judgments of each case. Although this is a common law rule, it also applies to written law. Japanese scholars point out that law is a fixed existence in concept, and the correct understanding of it is the concretization of law. German scholars also believe that, most enacted laws obtain their final form through concretization in the continuous process of judicial adjudication, and are then applicable to specific cases. Moreover, many legal principles are found to enter the current law through judicial adjudication. Criminal law only has significance when applied to real life. Judgments and indictments are vivid interpretations of criminal law. The clearer the interpretation, the easier it is for the general public to understand the content of criminal law, and the more effective it can play a general preventive role. Therefore, the judgment and indictment not only needs to have legality and rationality, but also must have clarity. The judgment must achieve clarity in the description of facts, the application of legal provisions, and the reasoning of the judgment. The indictment must ensure that the facts of the charges are clear and the applicable laws and regulations are clear. In addition, judges should not only make judgments based on relatively fixed punishments, but also make specific judgments, that is, they must declare specific punishments (the clarity of the declared punishments), and cannot declare indefinite punishments.

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