

Thinking on the Criminal Law of the Problem of the Amount of Financial Crime

Yi Qian

Hubei University of Police, Wuhan, Hubei Province, 430000, China

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Abstract: The crime of financial fraud is stipulated in Chapter III of the book of criminal laws. The attention of criminal law scholars to financial crimes is mostly focused on the identification of crimes. There are many disputes and confusions in the application of criminal law in judicial practice. It is the implementation of the principle of equality in criminal law and the need to effectively guide judicial practice for in-depth studying the problems of the amount of penalties for financial crimes.

1. Introduction

Financial crime is an important type of economic crime. The large criminal amount and serious consequences have more serious social harm than traditional crimes. A variety of criminal law options have expanded the discretion of judges. With the promulgation of a series of documents such as the "Guidelines on Sentencing for People's Court", the reform of sentencing standardization has made significant progress. Discussing the application of sentencing for financial crimes plays an important promoting role in clearing up sentencing and standardizing sentencing.

2. The relationship between the amount of financial crime and the application of penalty

The amount of financial fraud is an important criterion for conviction. The criminal amount is the main basis for measuring the social harm of economic crimes. The influence of applicable criminal punishment is mainly manifested in the choice of punishment and the degree of applicable penalty[1].

The criminal law explicitly regards defrauding a certain amount of money as one of the constitutional conditions of other crimes. In the judicial practice, the crime of letter of credit fraud can be called a crime when considering the criminal amount to a certain extent. Article 13 of the Criminal Law shall be taken into account in the Basic Law. In the crime of financial fraud, if the doer defrauds a small amount of finance, the practice generally does not sentence it as a crime. The criminal law stipulates that other serious circumstances should be taken as the constitution of crimes for aggravated offence. When the amount reaches a huge standard, it is also necessary to consider the other circumstances of the case.

The criminal law sets three extents for measurement of punishment for each crime of financial crime. And there are multiple penalties set up so that the judge can choose and apply them at their discretion. At present, there are four extents for measurement of punishment for judging crime of fraud in financing. At this time, the criminal amount plays a role in choosing legally prescribed punishment and determining the extent for measurement of punishment[2].

When determining the penalties, the judge must consider the criminal amount. China's criminal law usually adopts a relatively certain pattern to stipulate the amount of punishment for a specific crime, that is, there will be multiple kinds of imprisonment for the judge to choose when the extent for measurement of punishment is determined. The criminal amount is an important consideration in measuring the social harm of financial crimes. If the more amount exceeds the starting point, the heavier types of punishment and the term of imprisonment shall be chosen. However, on the premise of considering other circumstances of the case comprehensively, scholars hold different views on whether the criminal amount can be regarded as the circumstances determining the severity of penalty after it was convicted as circumstances for adjudication. The amount of

conviction is the cause for the accumulation of criminal circumstance to achieve qualitative change or partial qualitative change. Therefore, the circumstances of conviction are circumstances for sentencing. After the starting point of the criminal amount was taken as circumstances for adjudication, it is not appropriate to consider it as a circumstance that affects the severity of the specific penalty.

3. The relationship between the amount of financial crime and the unbalanced application of penalty

The ambiguity of the criminal amount standard of financial fraud will affect the application of penalty, which is an important factor causing the imbalanced application of penalty of financial fraud. There are some reasons for the unbalanced application of penalty in judicial practice, such as the crude criminal legislation technology, the unclear penalty provisions for financial crimes and subjective of judges.

After the promulgation of “the Amendment to the Criminal Law”, the applicable standards for the death penalty for financial crimes are not clearly, which manifested in the fact that the death penalty only applies to criminals who commit extreme serious crimes. But the law does not make any specific provisions for the extreme seriousness. The grasp the extreme seriousness has become a key issue in the application of death penalty. Article 48 of the General Provisions of Criminal Law stipulates that suspended sentences may be applied to criminals sentenced to death unless they should be executed immediately. The criminal law does not stipulate the situations that do not have to be executed immediately, which poses a difficult problem for the reprieve system of death penalty. When the amount of the crime of fraud in financing is especially huge and causes huge losses to the country, judges may choose the life imprisonment. This provision limits the application of the death penalty and increases the discretionary power of the judge, leading to confusion in the application of the death penalty. Different judgments may be made for cases that meet the same conditions. It cannot be said that the judges uses the legal wrongly, but it is the difference between the life and death for the defendant [3].

There are two kinds of penalties for financial fraud: fines and confiscation. Judges should pay attention to the applicable specific amounts within the legal range when deciding. Units crime imposes unlimited fines on those directly responsible. It not stipulates how many fines are imposed, and the specific amount of fines is discretionary. The penalty of unlimited fine in criminal law is a kind of absolutely indeterminate penalty, and the consequence of not setting a ceiling on the fine is unimaginable. It is inhumane for citizens to bear unpredictable consequences for their actions. It should directly stipulate that the range of sentencing should be determined in the specific provisions of criminal law. At present, there is no such provision, and it can only be determined in accordance with the principle of fines imposed by the General Regulations. The property confiscated is divided into all and parts. The criminal law does not stipulate its specific distinction and relies entirely on the discretion of the judge. The correct use of property crimes for economic crimes is of great significance in preventing the fight against economic crimes. Therefore, it is important to clarify the applicable principles and determining rules of property punishment.

The criminal law sets three extents for measurement of punishment for each crime of financial crime. Different crime amounts correspond to different extents for measurement of punishment and different punishment against freedom periods. The amount is large and the length of set term of imprisonment is large. There is no rule guidance for the magnitude of the two. There is 200,000 difference between the great and huge of the criminal amount for crime of fraud in financing. The criminal law does not specify the applicable rules of penalty, and judges make discretion according to the specific circumstances of the case [4].

4. The classification and function of amounts in financial crimes

China's criminal law theory has different classifications for the amount of economic crimes. Judicial practice divides the criminal amount into the amount of profit, the actual amount, etc., or

divides it into the amount of crime directed and the amount of income, the amount of direct loss and the amount of indirect loss.

It is necessary to classify the amount of economic crime in detail in theory. The current Criminal Law summarizes the experience of criminal legislation in the past and stipulates the amount requirements for most amount crimes. The amount of financial crime has a wide connotation. The criminal law classifies it as denomination, amount of illegal gains, amount of money directly involved in criminal acts and amount of money of direct economic losses caused by acts.

In the criminal law and judicial interpretation of financial crimes, most of them use RMB as the measurement standard, while a few use quantity as the measurement standard. The author believes that due to the complexity of financial activities, there are various measurement units in the determination of the amount of financial crimes. If the unit is uniformly measured by the amount, it can not fully express the social harmfulness that all acts should show. Criminal law and judicial interpretation strictly stipulate the amount of crime. The conviction standard of unit crime is higher than that of natural person crime.

The change of things can be divided into quantitative change and qualitative change. There are also quality changes in the field of financial crime. The basic characteristic of crime is the social harm of behaviors. Harmfulness is the quality of crime. When the accumulation of social harmfulness exceeds a certain degree, it constitutes a crime. The criminal amount reflects the social harmfulness and the degree of crime.

The object of financial crime infringement is the key to distinguish financial crime from other crimes. In the provisions of criminal law, many financial crimes stipulate that when the result of the harmful act reaches a certain amount, it constitutes a crime. The criminal law stipulates that certain financial crimes takes a certain amount as a necessary condition for the crime. The summary of some circumstances is based on a certain amount of crime. Some financial crimes have no requirements for the amount, loss, etc. A certain amount still has a decisive effect. However, in judicial practice, the amount of crime and the degree of social harm cannot be ignored as the main basis for criminal judgment. The criminal law does not stipulate the specific amount, and the judicial interpretation will also make clear provisions[5].

The amount of financial crimes is proportional to the degree of social harm. Determining the applicable grade for the penalty should be based on the criminal amount. The criminal law divides the amount of financial crime into three grades of large, huge and particularly huge. According to this, different applicable standards are stipulated. The amount of financial crime plays an important role in the use of specific criminal laws. The severity of penalty varies with the criminal amount.

5. Suggestions on perfecting the application of financial crime and criminal penalty

The imbalance in the applicable crime of financial fraud is not individual cases in trial practice. In order to ensure the fairness of the judiciary, it must be discussed in depth. The applicable law of death penalty for fraudulent fund-raising is mainly based on articles 48-51 in the General Principles of Criminal Law. In cases where the crime is extremely serious, the criminal law does not specify specific criteria. It is necessary for the judge to decide whether to apply the death penalty immediately or to suspend the death based on the circumstances of the whole case, considering the degree of social harm of the crime and the criminal situation.

The criminal law stipulates that the crime of fraud in financing can be punishable by life imprisonment and death penalty. When a judge chooses a sentence, he does not need to consider the actual length of execution of the sentence. However, the period of life imprisonment is greatly extended, which can meet the needs of cracking down on more serious financial fraud crimes. It shows that life imprisonment is already a very serious punishment, which limits the application of the death penalty to a certain extent. For the determination of a particularly large amount, the particularly large standard of crime of fraud in financing refers to the amount is more than 1 million yuan for personal fund-raising fraud. It meets the needs of different levels of economic development in different parts of China. If there are mitigating reasons, life imprisonment can be taken as the choice of mitigating punishment. Because the crime of fraud in financing occurs mostly

in economically developed areas, a small amount of property loss by a single person will not cause social security problems.

The extraordinarily heavy losses to national interests should be limited to the extraordinarily large amount of irreparable loss of property, or the extraordinarily heavy property losses that have not been redeemed after taking recovery measures. If most of the property involved in fraudulent fund-raising cases has been returned to the investors to recover most of the losses, the property recovered by the public security organization should still be included in the criminal amount of the criminals. Legislators focus on protecting the legal interests of property infringed by the crime of fraud in financing. The situation such as strong repercussions and suicide of victims caused by the crime of fraud in financing should not be included in the scope of tremendous losses of interests to the country and the people. In accordance with the conditions applicable to the death penalty, they can be considered as a sentencing plot.

The extremely serious crime should adhere to the principle of the unity of subjectivity and objectivity. Only when someone is deprived of liberty still has some kind of connection and power that affects the security of the country, is it the reason why the death penalty should be considered as a dispute and the necessary punishment. Therefore, the application of the death penalty is to prevent crime and achieve justice. The death penalty can only be applied when the social harmfulness is extremely serious and crimes cannot be prevented without the death penalty. The death penalty can only be applied to violent crimes that violate the citizens' right to life. The crime of fraud in financing belongs to a non-exorbitant profit economic crime. Due to the current political and social development in China, the death penalty for fraudulent fund-raising is mainly based on the significant consequences caused by crime. The criminal who is applicable for the death penalty must be cruel on subjective viciousness and the possibility of recidivism is great. The motive of defrauding the retirement pension of the elders is more inferior than that of defrauding general investment, and death penalty can be considered.

The death sentence with reprieve is a penalty system in China. The applicable condition of death sentence with reprieve is that death penalty should be applied to the crime, but it does not need to be executed immediately. Attention should be paid to the influence of lenient circumstances on the application of death penalty, and more caution should be taken in the application of death penalty. If the perpetrator has a legally treat with leniency of the circumstances, the death penalty shall not be applied for immediate execution. But in a joint crime, it is necessary to distinguish the specific situation. The death penalty may be applied immediately to a number of criminals regardless of the principal or subordinate offenders. The perpetrator's own condition is different from the circumstances of punishment before and after the crime. When applying the penalty to the prisoner, the judge should consider the circumstances of the case and limit the application of the death penalty to the maximum extent.

The range of legally prescribed punishment for financial crimes is too wide, which makes judges unable to grasp it accurately. Reasonable application of penalty is an important problem in criminal law. The range of legally prescribed punishment for financial crimes is different. In the crime of notes fraud, within a particularly large extent for measurement of punishment, the offender shall be sentenced to set term of imprisonment of not less than 10 years and a fine of not less than 50,000 yuan. Within this range, judges may have the choice of more than ten years' imprisonment, life imprisonment and fine. The confiscation of property or the confiscation of all property depends entirely on the discretion of the judge. There is a risk of abuse if such a large space of discretion is not regulated.

Different understandings of the range of legally prescribed punishment will lead to different applicable methods of penalty. There are two kinds of understandings of accusation criterion and offence criterion about the range of legally prescribed punishment in the academic field. When a judge applies a penalty to a specific case, he must thoroughly investigate the circumstances of the crime. The penalty can be determined within the specific sentencing level and be based on the social harmfulness caused by the criminal behaviors. If the behavior is consistent with the basic aggravating composition, the penalty shall be applied within the basic penalty range. Both

classifications are considered to be applicable penalties in judicial practice. But the latter is more impartial. Because the quality of a specific criminal act has reached a level where more severe penalties can be applied, the latter understanding is more conducive to regulating the discretion of judges.

6. Conclusion

This paper discusses the criminal amount and the applicable penalties for financial crimes. It is pointed out that in order to achieve the balance of penalty application, it is necessary to clarify the applicable amount standard of death penalty for crime of fraud, to pay attention to the discretion of financial crimes, to clarify the amount determination of criminal attempt and to correctly grasp public opinion. This paper is limited in length, and the discussion of this issue needs to be deepened. It is hoped to be helpful to the applicable criterion for financial crimes.

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