The Application of the Principle of Legally Prescribed Punishment for Crime and Penalty in the Field of Criminal Justice Practice in China

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Abstract: The principle of legally prescribed punishment for crime and penalty is an ancient principle in criminal laws of the world. In 1997, the third article of the Criminal Code of China was used to clarify that the criminal law in our country should implement the principle of legally prescribed punishment for crime and penalty. The establishment of the principle has made our criminal law internationalized and modernized. However, whether the principle is truly applied in the practice of criminal justice remains to be studied and discussed. This paper analyses the influence of criminal judicial interpretation and criminal policy on the principle of legally prescribed punishment, puts forward some suggestions and opinions on existing problems, and strives to improve the application of this principle in China's criminal judicial practice, so as to effectively implement it in criminal justice.

1. Introduction

The basic meaning of the principle of legally prescribed punishment for crime and penalty is that, "do not punish behaviors which are not clearly stipulated in laws; an act is not a crime unless the law says it is one."

The principle of legally prescribed punishment for crime and penalty originated from the content of the Great Charter of Britain in 1215: "All free persons shall not be detained, imprisoned, confiscated or deprived of their property unless they are protected, exiled, injured, investigated or arrested in accordance with local or domestic law." This article establishes the basic idea of "due process of law" and lays the ideological foundation of the principle of legally prescribed punishment for crime and penalty. In the 17th and 18th centuries, British bourgeois Enlightenment thinkers put forward relevant propositions of legally prescribed punishment for crime and penalty on the basis of the expression of the Great Charter. The idea of legally prescribed punishment became a theory and systematic thought in the criminal law. With the victory of the bourgeois revolution, the principle of legally prescribed punishment for crime and penalty was established in the Constitution and criminal laws of the bourgeoisie. The French Declaration of the Rights of Man and of Citizen issued in 1789. The eighth article of this declaration states that, "the law stipulates punishment and indispensable punishment; no one shall be punished unless the person committed a crime which is stipulated in the law. The law should be promulgated legally before the crime." Under the guidance of this provision, Article 4 of French 1810 Criminal Law stipulated the principle of legally prescribed punishment for crime and penalty for the first time. Later, the principle was stipulated in the constitutions and criminal laws of civil law countries.

The principle has gradually derived many other principles of criminal law, including the prohibition of analogy of guilt, the exclusion of customary law, the prohibition of ex post facto law and the exclusion of absolute indefinite punishment. The basic requirements of the principle of legally prescribed punishment for crime and penalty first include the legalization of crime and punishment. Judges are required to determine and measure the charges of criminal suspects in strict accordance with the explicit provisions of the Criminal Code; they should not make unauthorized judgments and self-imposed penalties on criminals. Secondly, the legalization of penalty requires clarity. Criminal law should specify the criminal acts of the offenders and the consequences of the crimes they should bear. Finally, there is a clear requirement for sentencing. The provisions of the

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criminal law for sentencing must be clearly expressed in words, and the meaning conveyed should be clear and precise. There is nothing to do with the number of words and religion in the articles. Clear expression of word meaning is necessary; ambiguous and confused judgment is not allowed.

2. The Embodiment of the Principle of Legally Prescribed Punishment for Crime and Penalty in the Criminal Code of China

The principle of legally prescribed punishment for crime and penalty was not established in our Criminal Code in 1997. On the contrary, the analogy system contradicting the form of the principle was stipulated in Article 59. In 1997, China made a large-scale amendment to the content of the criminal law. The main purpose of this amendment is to add the principles of legally prescribed punishment and the application of criminal law, as well as the principle of equality and the compatibility of crime and punishment in the criminal law. It is an important milestone in the development of criminal law in China. The principle of legally prescribed punishment for crime and penalty not only embodies the spirit of democracy, but also reflects the spirit of ruling the country by law, so it has attracted great attention of the public. However, as the basic principle of criminal law, the principle of legally prescribed punishment for crime and penalty must go to justice. It should be included not only in the legislation process, but also in the judiciary practice. It can only play its role and embody its own value through the solution of specific cases.

3. Problems of the Principle of Legally Prescribed Punishment for Crime and Penalty in the Field of Criminal Justice Practice in China

If the principle of legally prescribed punishment for crime and penalty is not implemented in criminal justice, it will have no significance. Legislation is only the beginning; the principle still has a long way to go before it can be fully implemented in every link of criminal justice activities. That is what we call “embodied in the case“. For this reason, criminal judicial interpretation and criminal policy have a certain impact on the “implementation in judicial practice“. Such an impact is almost ineviTable from the perspective of the construction a society ruled by law, so we need to analyze and explore the root causes of the impact of “criminal justice interpretation“ and “criminal policy“.

3.1 The perspective of criminal justice interpretation

3.1.1 Confusion in the main body of judicial interpretation

When there are problems in the use of the law, and the problems cannot be solved from the legislative point of view for the time being, our judicial organs need to explain the law. The contention between the Supreme Judicial Court and the Supreme People’s Procuratorate for the power of interpretation often makes one “ambiguous“ application problem become two questions. In the United States, if similar situation happens, the power of judicial interpretation will be delegated to the courts. In our country, both the Supreme Judicial Court and the Supreme People’s Procuratorate have the power of interpretation, which led to the inconsistency of contents in the process of judicial interpretation. There are also scholars who have been committed to recommending that the power of interpretation should be vested in the Supreme People’s Court. Although generally speaking, judicial interpretation cannot be regarded as the source of criminal law, in judicial practice, judicial interpretation is often a vane of how to apply the law. So it is easy to blindly “expand“ or “narrow“ the determination of a crime or a penalty, which is a “fundamental negation“ of the principle of legally prescribed punishment for crime and penalty.

3.1.2 The scope of judicial interpretation is not clear

Because of the confusion in the main body of judicial interpretation, in China, the scope of judicial interpretation is not clear enough. In practice, courts and procuratorates often give different interpretations on the same judicial issue. For example, when facing the problem of new criminal charges, courts and procuratorates give different interpretations, which leads to different interpretations in practice. The confusion of time-consuming judicial interpretation directly leads to

the reduction of the authority of laws and regulations. Although the courts and procuratorates have their own limits on judicial interpretation, they lack mutual coordination and communication. They use respective theories, which lead to the fact that the law is no longer unified but split. The phenomenon seriously harms the fairness and effectiveness of judicial interpretation. Similarly, there are deviations in the application of the principle of legally prescribed punishment for crime and penalty.

3.1.3 The situation of ultra vires interpretation

The main function of judicial interpretation is to solve problems in the application of criminal law. Judicial interpretation is different from modify or create laws and regulations. Judicial interpretation is often questioned in the course of its use; its mode of interpretation leads to vague appropriateness and difficulties in the scale control. The interpreting organ often creates laws and regulations in the name of interpretation. This is an obvious act of ultra vires interpretation. After all, judicial interpretation is not the creation of law. The act of overstepping the limits directly results in the impact of legislative principles. This phenomenon will probably lead to the situation of law being overridden. At that time, the principle of legally prescribed punishment for a specified crime will become a slogan.

3.2 The perspective of criminal policy

The relationship between criminal policy and the principle of legally prescribed punishment for crime and penalty

Criminal policies and the principle of legally prescribed punishment for crime and penalty have similar purposes and value theories. The theory of criminal policy is put forward by Feuerbach, who is the founder of the theory of psychological compulsion. The theoretical basis of this principle also includes the theory of psychological compulsion. Moreover, both the theory of criminal policy and the principle of legally prescribed punishment have the fundamental purpose of “prevention and correction“. They have the same purpose from the beginning of establishment.

The criminal policy of our country pays attention to the maintenance of social order, and the principle of legally prescribed punishment for crime and penalty also takes full account of the judgment of value content. Thus, in our country, the concept of crime and the constitution of crime are judged by the degree of social harmfulness.

They share the same principle of limitation: the modesty of criminal law. China’s criminal policy can be taken as an example. The “criminal policies combine leniency with severity and the death penalty“; the national criminal policy stipulates that “for criminals belonging to minority nationalities, we should adhere to the principle of ‘less arrest, less killing’ and generally be lenient in handling them.“ The policies of insisting on less and cautious death penalty as well as educating juvenile offenders reflect the modest and restrained principle of criminal law. At the beginning of the Middle Ages, the principle of legally prescribed punishment for crime and penalty came into being in order to limit the power of the king and prevent the abuse of punishment. Up to now, the principle of legally prescribed punishment still plays a role in restricting power and guaranteeing human rights.

The principle of legally prescribed punishment and criminal policy play important roles in punishing crimes and guaranteeing human rights. The principle of legally prescribed punishment for crime and penalty sets a fixed limit for criminal policy. The implementation of criminal policy must be carried out within the framework of this principle. Extra grace and punishments are strictly prohibited. Because once the criminal policy departs from the principle of legally prescribed punishment, its justice cannot be guaranteed. The Supreme Procuratorate stipulates the document, Carrying out the Criminal Policy of Leniency and Severity in Work and stipulates that, “we should implement the criminal justice policy of combining leniency with severity, adhere to the principle of legally prescribed punishment for crime and penalty, the doctrine of correspondence between crime and punishment, and the principle of all people are equal before the law. We need to realize the organic unity of policy guidance and strict law enforcement, and combine leniency with severity. Leniency and strictness must be carried out strictly in accordance with the law and within the scope

of the law. Lenient and strict solutions should be lawful and justifiable.“ The requirement of the principle of legally prescribed punishment cannot deny the value choice of the articles, which may be influenced by the criminal policy in legislation.

From the standpoint of the unification of formal rationality and substantive rationality, the principle of legally prescribed punishment “not only has requirements on the minimum formal rationality in the exercise of the state’s penalty power and in conviction and sentencing, but also derives the requirement that when exercising the penalty power, the state needs to meet the requirement of substantive rationality; when the judicial organs investigating the defendant’s crime, they also need to meet that requirement“. How to understand and realize the requirement of substantive rationality? The criminal policy provides the explanation. The rigidity and hysteresis quality of legal provisions of the criminal law determines that the legal provisions cannot fully adapt to social life. Judicial procedures for minors are distinguished from those for adult offenders, because criminal law aims not at punishment but at prevention. At that time, the role of criminal policy is highlighted. We should make full use of criminal policy to supplement, improve and guide the principle of legally prescribed punishment, and make up for the inherent defects of legal principles.

4. Solution and Remedy of Problems

4.1 Suggestions on improving the judicial interpretation of criminal law under the principle of legally prescribed punishment for crime and penalty

To implement the principle of legally prescribed punishment in judicial interpretation of criminal law, we need to establish a new concept of criminal law. In 1997, our country embodied the principle of legally prescribed punishment for crime and penalty in the new criminal law. However, now the Supreme Procuratorate and the Supreme Court go beyond their powers in judicial interpretation. The judicial interpretation from the court and the procuratorate do not have a unified standard, which leads to the lack of vagueness, fairness and clarity of the law. Actually, it has affected the implementation of the principle of legally prescribed punishment. In criminal judicial practice, we are accustomed to choosing the severe judicial interpretation in criminal punishment when problems arise. Under that situation, we should fundamentally establish a new concept of criminal law, reform the interpretation powers of the Supreme Procuratorate and the Supreme Court, and truly apply the principle of legally prescribed punishment for crime and penalty from system to practice.

Besides establishing the legal effect of excluding ultra vires interpretation, in order to prevent the legislative field from being invaded by the judicial power, in our country, using legislative power to restrict judicial power is one of the important contents of the principle of legally prescribed punishment. In essence, judicial interpretation power should belong to judicial power. With the development of society, laws and regulations are progressing constantly. Loopholes come into being in the process of continuous improvement. To close these loopholes through legislation is the best choice. Under the premise of the principle of legally prescribed punishment, we need to clear the demarcation between the legislative power and the judicial power, and prevent the situation of ultra vires interpretation.

4.2 Attaching importance to the interpretation of criminal policy

The relationship between criminal policy and the principle of legally prescribed punishment should be improved. “The best social policy is the best criminal policy“. Criminal policy plays an important role in stabilizing society. The impact of criminal policy on the principle of legally prescribed punishment is mainly manifested in two aspects. If relevant criminal policies are perfect and mature, we can directly formulate and improve relevant laws and regulations according to relevant criminal policy and realize the legalization of criminal policy. If relevant criminal policy is still vague and general, and its value orientation is still ambiguous, it will be inappropriate to immediately transform the law; we should pay attention to the practice of relevant policy value in

judicial practice. The legislation of criminal law should maintain a certain degree of stability. Frequent amendments and repeal of legislation will seriously affect the implementation effect of criminal laws. In practice, the criminal law should be implemented from the perspective of conviction and sentencing.

5. Conclusion

As an ancient and long-standing legal principle, the principle of legally prescribed punishment for crime and penalty should adapt to the process of ruling the country by law with the development of the times. Its meaning go beyond the sentences, “do not punish behaviors which are not clearly stipulated in laws; an act is not a crime unless the law says it is one“. How to correctly handle the implementation and application of the principle is worthy of in-depth study.

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