

Several Issues Concerning the Corruption Crimes of Private Entrepreneurs: Based on Empirical Research

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Abstract

Studies have shown that top leaders and department heads of privately-owned enterprises differ significantly in the types of corruption crimes and the links where crimes are committed. Therefore, corruption crimes of private entrepreneurs should be countered with the methods well targeted at the subjects of crime. In addition, penalties do not fit crimes by the conviction and penalty imposition for corruption crimes, which seriously undermine the effect of criminal penalties on crime prevention. Therefore, the sentencing range should be elaborated and other measures should be taken so that crimes and penalties will be balanced.

Key words: Private entrepreneurs; Corruption crime; Countermeasures; Empirical research

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INTRODUCTION

Since the reform and opening up, more and more persons have become private entrepreneurs. By bringing their labor and wisdom into play, they have created wealth, expanded the market, developed the economy, and boosted the reform. However, in recent years, private entrepreneurs increasingly tend to commit crimes, which not only affects the healthy development of enterprises but also causes

serious damage to the market economic environment. In particular, private entrepreneurs' corruption crimes have attracted more attention in recent years as a result of many "collusions between officials and businessmen". Most existing studies of private entrepreneurs' corruption crimes focus on theoretical speculation, and there are few empirical studies. It should be noted that both theoretical research and empirical research are essential methods for scientific research. But in terms of the study of crimes, empirical research is more suitable and plays an irreplaceable role (Zhao, 2000). U.S. criminologist Richard Qinnay even believes that "In a sense, the modern criminology is empirical in basic methodology elaboration (Research Office for the Law on Reform through Labor, 1985, p.25). Therefore, the study of private entrepreneurs' corruption crimes should not be just limited to theoretical analysis, and the empirical study should be enhanced.

As the study of private entrepreneurs' corruption crimes is at its initial stage, there are some topics remaining untouched: How is the criminal situation, what countermeasures should be taken, whether penalties fit crimes, etc. The solutions to these problems need to be based on empirical data. Therefore, 268 cases of private entrepreneurs' corruption crimes are selected from the "Database of Judgment Documents on Entrepreneurs' Crimes" of the Research Center for Chinese Entrepreneurs' Crimes at Beijing Normal University to conduct a preliminary empirical study of private entrepreneurs' corruption crimes in three aspects: hazards, countermeasures and sentencing.

1. AWARENESS OF THE SERIOUSNESS AND HARMFULNESS OF CRIMES

1.1 Description of Status Quo

According to the conventional opinion, private entrepreneurs are main criminals with offering bribes and

other¹ “output corruption crimes”, and it is common to “find entrepreneurs behind corrupt officials”. A deputy to the People’s Congress of Shanxi Province said, “Behind almost every corrupt officials stands enterprises’ bosses”². According to the statistics, misappropriation by virtue of position and other “input corruption crimes” also account for a high proportion of private entrepreneurs’ corruption crimes, and they far outnumber “output corruption crimes”. As shown in Table 1, among the 268 criminal judgments of private entrepreneurs’ corruption crimes already published in 2014, “input corruption crimes” account for 69%, while “output corruption crimes”

account for only 12.7%. These two types of crimes differ greatly in crime amounts: The average crime amount of the 33 “output corruption crimes” with exact crime amounts was RMB 331,465.33 yuan, while the average crime amount of the 146 “input corruption crimes” with exact crime amounts” was as high as RMB 2,485,942.71 yuan. According to the Criminal Law and the relevant judicial interpretations, the crime amounts of both these two types of crimes have reached the criteria for heavier penalties for “huge amounts”. To a certain extent, this reflects the huge harm of these two types of crimes to society.

Table 1
Distribution of Private Entrepreneurs’ Corruption Crimes

Effective	Crime of offering bribes	18	2.0	6.7	6.7
	Crime of entities’ offering bribes	13	1.4	4.9	11.6
	Crime of offering bribes to non-government employees	3	.3	1.1	12.7
	Crime of non-government employees’ accepting bribes	59	6.4	22.0	34.7
	Crime of misappropriation by virtue of position	126	13.7	47.0	81.7
	Crime of embezzlement	49	5.3	18.3	100.0
	Total	268	29.1	100.0	
Missing	Other crimes	654	70.9		
Total		922	100.0		

1.2 Problem Study

The above data not only reflect private entrepreneurs’ serious corruption crime situation, but also shown the high dark figure of such crimes (because according to the traditional perspective, only “output corruption crime” is deemed as corruption crime). Of course, the inadequate awareness of private entrepreneurs’ corruption is embodied not just this aspect.

First of all, from the traditional perspective, “corruption” is usually associated with politicians and

public officials (Stapenhurst & Kpundeh, 2001), and there is a mindset that corruption corresponds to public officials (Zhang, 2014). Therefore, some scholars do not recognize private entrepreneurs’ “corruption crime” when this concept was just put forward. But actually, provisions on the corruption in the private sector were made in the United Nations Convention against Corruption (“the Convention”) passed at the United Nations General Assembly in 2003.³ The Chinese

¹ Private entrepreneurs’ corruption crimes include the crime of offering bribes, the crime of entities’ offering bribes, the crime of offering bribes to entities, the crimes of offering bribes to non-government employees, the crime of non-government employees’ accepting bribes, the crime of misappropriation by virtue of position, and the crime of embezzlement. By the interest transfer direction, corruption practices are divided into three types: the first type is “output corruption crime”, including the crime of offering bribes, the crime of entities’ offering bribes, the crime of offering bribes to entities and the crimes of offering bribes to non-government employees; the second type is “input corruption crime”, including the crime of non-government employees’ accepting bribes and the crime of misappropriation by virtue of position; and the third type is “embezzlement corruption crime” means the crime of embezzlement. The first two types have obvious criminal features and will be studied intensively in this thesis.

² *People’s Daily Online*. Retrieved 2015, June 16 from <http://leaders.people.com.CN/n/2015/0130/c58278-26477683.html>

³ Article 21 of the Convention: Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting. Article 22 of the Convention: Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

government signed the Convention. As a carrier of the latest concept of global anti-corruption and the latest experience in cooperation mechanism, so far the Convention is the most complete and most extensive international legal document on corruption crime (Zhu, 2005). Therefore, the objective existence of private entrepreneurs' corruption crimes is recognized in the international community.

Secondly, the public still generally thinks that the harms of private entrepreneurs are limited to food safety and environmental pollution. These harms affect our life quality or threaten our safety, and more importance should be attached to them. But we should not ignore this universal phenomenon: The long-standing food safety crimes and environmental pollution crimes are inseparable from widespread corruption and collusion between government officials and businessmen. The reason for some officials' "sacrificing national or public interests" despite huge economic losses caused to the state is the interest transfer from private entrepreneurs. Such interest transfer is accompanied by "output corruption crimes". Therefore, "output corruption crimes" not only undermines the government's image and deteriorate the economic environment, but also directly damage the public interests. Serious harm to "output corruption crimes" should not be overlooked. As elites in society, private entrepreneurs' misappropriation by virtue of position, accepting bribes and other misconducts not only undermine the authoritativeness and stability of laws and the legitimate rights and interests of companies, but also undermine honesty, credibility, fairness and other core values maintaining social existence and development foundation (Zhang, 2014). Such "negative energy" is undoubtedly running counter to "better playing entrepreneurs' role" advocated at the Third Plenary Session of the eighteenth CPC Central Committee.

At last, private entrepreneurs' corruption crimes have not been properly dealt with and attracted adequate attention. In the important speech delivered by Xi Jinping at the Third Plenary Session of the Eighteen CPC Central Discipline Inspection Commission, Xi (2015) said, "We must continue to intensively fight against corruption and take a 'zero toleration' attitude towards corruption". In this situation, public officials' corruption crimes have been curbed to some extent, but in sharp contrast, private entrepreneurs' corruption crimes remain untackled in the national "anti-corruption system". In fact, anti-corruption measures only targeting by public officials can curb corruption crimes just to a certain extent because private entrepreneurs' corruption crimes are accompanied by public officials' corruption crimes. Therefore, an all-round anti-corruption concept should be established to include private entrepreneurs' corruption crimes in the overall strategy for fighting against corruption. Only in this way,

will the weaknesses in the fight against corruption could be overcome to comprehensively and concertedly boost the continuous and in-depth implementation of the fight against corruption.

2. CRIME PREVENTION : COUNTERMEASURES NOT TARGETED ENOUGH

2.1 Description of Status Quo

2.1.1 Analysis of the Interaction Between "Titles in Enterprises" and "Types of Crimes"

According to the conventional opinion, the powers of private entrepreneurs as "top leaders" are not restrained or supervised, and they tend to be used to commit crimes. Are there differences in the types of crimes committed by "top leaders" and "non-top leaders" of enterprises? The author analyzes the interaction between "specific crimes" and "titles in enterprises" (the results are shown in Table 2). As can be seen from the Chi-square test results $\chi^2=45.401$, $df=35$, $p=0.112$, persons holding different titles in enterprises do not differ greatly in specific crimes committed. But the data in Table 2 show that actual controllers, and chairmen of the Boards of Directors and other "top leaders" differ from department heads to some extent in the specific crimes committed. Specifically, over half of chairmen of Board of Directors, general managers, legal representatives and other top leaders commit the crime of offering bribes, the crime of entities' offering bribes and the crime of offering bribes to non-government employees, while over half of department heads commit the crime of non-government employees' accepting bribes, the crime of misappropriation by virtue of position and the crime of embezzlement. In order to find whether "top leaders" and "department heads" differ significantly in the types of crimes committed, the author integrates relevant indicators and ⁴ makes the interaction analysis again. The chi-square test results, $\chi^2=19.139$, $df=8$, $p=0.014$ show that "top leaders" and "department heads" differ greatly in the types of crimes committed: in privately-owned enterprises, "top leaders" mostly commit "output corruption crimes" and department heads usually commit "input corruption crimes".

⁴ Specifically, "chairmen of the Boards of Directors", "general managers", "actual controllers" and other indicators are collectively deemed as "top leaders"; "other department heads", "chief financial officials" and other indicators are collectively deemed as "department heads", "crime of offering bribes", "crime of entities' offering bribes" and "crime of non-government employees' offering bribes" are collectively deemed as "output corruption crimes", and "crime of non-government employees' accepting bribes" and "crime of misappropriation by virtue of position" are collectively deemed as "input corruption crimes".

Table 2
Analysis of the Interaction Between Titles and Crimes of Private Entrepreneurs (N=268)

	Titles in enterprises								Total	
	Actual controllers, shareholders	Other department heads	Supervisors	Persons in charge of technology	Chairmen of the boards of directors, general managers, legal representatives	Directors	Persons in charge of the relationship between the Party and the masses	Persons in charge of finance		
Specific crime	Crime of offering bribes	16.7%	27.8%		5.6%	50.0%				100.0%
	Crime of entities' offering bribes	7.7%	23.1%			69.2%				100.0%
	Crime of offering bribes to non-government employees					100.0%				100.0%
	Crime of non-government employees' accepting bribes	5.1%	52.5%	1.7%	6.8%	32.2%			1.7%	100.0%
	Crime of misappropriation by virtue of position	2.4%	50.8%	0.8%	0.8%	31.0%	2.4%	0.8%	11.1%	100.0%
	Crime of embezzlement	2.0%	49.0%			40.8%	2.0%		6.1%	100.0%
	Total	4.1%	47.4%	0.7%	2.2%	36.9%	1.5%	0.4%	6.7%	100.0%

2.1.2 Analysis of the Interaction between “Links of Crimes” and “Types of Crimes”

According to the Report of Chinese Entrepreneurs' Crimes published by Beijing Normal University in 2014, financial management and operation process are the links involving higher possibilities of private entrepreneurs' crimes, but the report does not reveal which crimes tend to be committed in these links. The author analyzes the interaction between “types of crimes” and “links of crimes”. As shown in Table 4, nearly 70% of corruption crimes are committed in enterprises' financial management and operation. Specifically, over half of the crimes of misappropriation by virtue of position and the crimes of embezzlement are committed in the financial management link, and over half of the crimes of offering bribes and the crimes of entities' offering bribes are committed in the operation link.

The interaction analysis of “titles” and “types of crimes” show that “top leaders” of private enterprises usually commit “output corruption crimes”, while department heads usually commit “input corruption crimes”. Then, is the link where the “top leaders” of privately-owned enterprises commit crimes somewhat

related to the link where department heads commit crimes? After the interaction analysis of “links where crimes are committed” and “titles in enterprises”, the Chi-square test results $\chi^2=101$, $df=40$, $p=0$ show that entrepreneurs holding different titles in enterprises differ significantly in the links where crimes are committed: “Top leaders” usually commit crimes in the operation process, while department heads generally commit crimes in the financial management process.

2.2 Problem Study

As Professor Zhang Weiyang said, entrepreneurs' pursuit of profit is never-ending (Zhang & Sheng, 2014, p.138). If we say entrepreneurs' “input corruption crimes” are openly in “pursuit” of wealth, in “output corruption crimes”, powers are used as media to intermingle their pursuit of powers and their struggle for profits: in pursuit of profits for powers, and in pursuit of powers for profits (Ibid., p.139). Therefore, in terms of the causes of crimes, both “output crimes” committed by “top leaders” and “input crimes” committed by department heads are rooted in the endless pursuit of interests. But the similarity in the causes of crimes does not mean that taking the same

Table 3
Interaction Analysis of Specific Crimes and the Links Where Crimes Are Committed (N=268)

		Links where crimes are committed									
		Financial management	Project contracting	Change in the incorporation of the company	Operation	Change in personnel	Financing	Production	Purchase of materials	Salary management	Total
Specific crime	Crime of offering bribes	11.1%	5.6%	11.1%	50.0%	11.1%	5.6%		5.6%		100.0%
	Crime of entities' offering bribes			15.4%	76.9%	7.7%					100.0%
	Crime of offering bribes to non-government employees	66.7%					33.3%				100.0%
	Crime of non-government employees' accepting bribes	8.5%	3.4%	16.9%	33.9%	11.9%	1.7%	11.9%	10.2%	1.7%	100.0%
	Crime of misappropriation by virtue of position	4.0%	50.8%	0.8%	27.0%	10.3%		4.8%	2.4%		100.0%
	Crime of embezzlement	4.1%	69.4%		2.0%	22.4%		2.0%			100.0%
	Total	6.0%	37.7%	5.6%	0.4%	31.3%	0.7%	1.5%	4.9%	3.7%	0.4%

countermeasures is effective. As can be seen from the above data, “top leaders” and “department heads” of privately-owned enterprises differ significantly in links where crimes are committed and the types of crimes. As a result of this difference, different precautions shall be taken for these two types of subjects.

As for “output corruption crimes”, on the precondition of sticking to the all-round fight against corruption crimes, anti-corruption initiatives will demand the standardized management of privately-owned enterprises, thereby fundamentally reducing the “output corruption crimes” committed by private entrepreneurs (Zhang, 2014). The reason for taking such countermeasures rather than imposing severe criminal penalties is that penalties are less deterrent for such criminals. U.S. Scholar Simpson believes that the difference in the nature of crimes results in the difference in the deterrence for criminal penalties. Most traditional crimes are generally committed on the basis of individuals' certain needs, and entrepreneurs commit crimes mainly for enterprises' interests. So entrepreneurs tend to think that enterprises should bear responsibilities for crimes. This difference in conception significantly reduces the deterrence of criminal penalties for criminals (Simpson, 2002, p.57). Therefore, maybe severe criminal penalties are not effective countermeasures for private entrepreneurs' corruption crimes.

“Input corruption bribes” and “embezzlement corruption bribes” should be prevented through the improvement of enterprises' internal risk prevention and control mechanism. According to Article 12 of the Convention, “Each state shall enhance the accounting and audit standards for the private sector, and at its discretion specify effective, appropriate and exemplary civil, administrative or criminal penalties for the acts in violation of the measures”. This provision shows that non-standardized financial management leaves opportunities for corruption crimes. Currently, China's privately-owned enterprises suffer from low standardized operation, poor internal control mechanism, and many loopholes in financial management. As a result, they are “hotbeds” for “input corruption crimes”. Therefore, “input corruption crimes” should be prevented through the enhancement of enterprises' internal control and the standardization of enterprise management. In addition, according to the social exchange theory, interpersonal communication is based on the exchange of materials and ideas between each other. Such exchanges aim at mutual benefits and derives the sense of obligation. If it is found through comparison that exchange inequality will result in the feeling of unfairness, cognitive imbalance will follow once the sense of obligation and the sense of fairness is broken. In order to reestablish cognitive balance, unethical acts will be often committed

(Donald, 2008). Similarly, when there is an excessively large gap between department heads' contribution to enterprises and their returns, they will feel unfair and become psychologically imbalanced, and they will re-strike the balance through the misappropriation of enterprises' assets and the embezzlement of enterprises' fund. Therefore, privately-owned enterprises should establish a scientific "return system" so that employees can get more pay for more and better work.

3. SENTENCING EVALUATION: PENALTIES UNFIT FOR CRIMES ARE COMMON

3.1 Description of Status Quo

Private entrepreneurs' corruption crimes are all economic crimes, and the crime amounts range from tens of thousands yuan to tens of millions yuan. The wide gap between criminal penalties is often denounced. But as "voluntary surrender", "making contributions", "confessing", "recidivists", "accessary criminals" and other factors affecting sentencing are not rare in crimes, it is not scientific to draw the conclusion just through the comparison of different crime amounts and prison terms. Therefore, the author here studies the sentencing based on the "mean of declared sentences for crimes without statutory sentencing circumstances" commonly used in the empirical study in criminology⁵ and "the Spearman rank correlation coefficient"⁶. Owing to the sample size, the author only selects the samples in relatively larger sizes: the crime of non-government employees' accepting bribes and the crime of misappropriation by virtue of position. In addition, according to the requirements of the "mean of declared sentences for crimes without statutory sentencing circumstances" the author selects the samples which meet all of the four requirements: "high amount of misappropriation by virtue of position", "declared sentences for crimes without statutory sentencing circumstances", "sentenced to the fixed-term imprisonment" and "temporary suspension of sentence execution not applicable"; further, the samples are classified into two groups according to the provisions

of the criminal law: basic constitution (high amounts) and aggravating constitution (huge amounts). Among 39 samples of the crime of misappropriation by virtue of position, 10 samples are under the benchmark sentencing circumstances and 29 samples are under the aggravating sentencing circumstances. Among 27 samples of the crime of misappropriation by virtue of position, 9 samples are under the benchmark sentencing circumstances and 18 samples are under the aggravating sentencing circumstances.

The results of the "mean of declared sentences for crimes without statutory sentencing circumstances" are as follows: Among the samples of the crime of misappropriation by virtue of position, the "mean of declared sentences for crimes without statutory sentencing circumstances" in 10 cases with huge amounts is 24.6 months, and the "mean of declared sentences for crimes without statutory sentencing circumstances" in 29 cases with huge amounts is 81.31 months. It should be noted that the median of the statutory fixed-term imprisonment in the crime of misappropriation by virtue of position with basic composition is 33 months⁷, and the median of the statutory fixed-term imprisonment in the crime of misappropriation by virtue of position with aggravating composition is 120 months. Among the samples of the crime of non-government employees' accepting bribes, the "mean of declared sentences for crimes without statutory sentencing circumstances" in 9 cases with huge amounts is 22.22 months, and the "mean of declared sentences for crimes without statutory sentencing circumstances" in 18 cases with huge amounts is 68.89 months. It should be noted that the median of the statutory fixed-term imprisonment in the crime of non-government employees' accepting bribes with basic composition is 33 months, and the median of the statutory fixed-term imprisonment in the crime of non-government employees' accepting bribes with aggravating composition is 120 months. Thus it can be seen that in the samples of the two crimes, the "mean of declared sentences for crimes without statutory sentencing circumstances" is lower than the corresponding median of the statutory fixed-term imprisonment no matter whether the crimes are of the basic composition or of the aggravating composition.

In the test on the Spearman rank correlation coefficient, the selected samples are consistent with the samples of the "mean of declared sentences for crimes without statutory sentencing circumstances", and the selected

⁵ The "mean of declared sentences for crimes without statutory sentencing circumstances" refers to the mean of the declared sentences in a number of cases without any statutory sentencing factors and to a certain statutory sentencing range. Bai, J. J. (2014). *The practice of empirical legal research* (pp.82-86). Beijing: Peking University Press.

⁶ According to the principles of statistics, the closer the Spearman coefficient is to 1, the more balanced the crimes are, that is, the better matched between the crime seriousness represented by crimes and the penalty severity represented by the term of the fixed-term imprisonment; the closer this coefficient is to 0, the less balanced the crimes are, the less relevant between the penalty severity and the amount of the proceeds from misappropriation by virtue of position.

⁷ The median of a certain statutory sentencing range is calculated as follows: The upper limit minus the lower limit, then divided by 2, and then plus the lower limit. Take the statutory sentencing range in the crime of misappropriation by virtue of position with basic composition as example, the upper limit of the fixed-term imprisonment of not more than 5 years is 60 months, and the lower limit is 6 months, So $60-6=54$; $54 \div 2=27$; $27+6=33$. The same below.

two indicators are “proceeds of crime” and “term of fixed-term imprisonment”. As shown by the results, among the 10 crimes without any statutory sentencing factors, with high amounts of misappropriation by virtue of position, with the fixed-term imprisonment not applicable and with the temporary suspension of sentence execution not applicable, the rank correlation coefficient between penalties is 0.598, and the significance value of this result, namely, the *p* value is 0.068 (as shown in Table 4). On one hand, this shows that the amounts of misappropriation by virtue of position have a significant effect on the penalty severity, the two are highly positively correlated, and the higher the amounts of misappropriation by virtue of position, the longer the imprisonment terms. On the other hand, there is a large gap between 0.598 and 1, so the balance between crimes and penalties should be further improved. Similarly, according to

the calculation of the 29 samples with huge amounts, the correlation coefficient is 0.133 and *p* value is 0.49, showing that when the amounts of misappropriation by virtue of position are huge, the amounts of the proceeds of crime do not significantly affect the penalty severity, and crimes and penalties are much less balanced. Among the samples of the crime of non-government employees’ accepting bribes, the Spearman rank correlation coefficient of the group with basic composition is 0.832 and *p* value is 0.005, which shows that in the crime of non-government employees’ accepting bribes with basic composition, the amounts of the proceeds of crime significantly affect the penalty severity; in the group with aggravating composition, the correlation coefficient is 0.227 and *p* value is 0.365, which shows that the amounts of the proceeds of crime do not significantly affect the penalty severity, and crimes and penalties are much less balanced.

Table 4
Test on the Correlation Between the Proceeds of Crime and the Specific Imprisonment Term

		Imprisonment term of a specific crime (months)	Proceeds of crime
Imprisonment term of a specific crime (months)	Pearson correlation	1	.598
	Significance (two-sided)		.068
	<i>N</i>	10	10
Proceeds of crime	Pearson correlation	.598	1
	Significance (two-sided)	.068	
	<i>N</i>	10	10

3.2 Problem Study

With regard to the relationship between the “mean of declared sentences for crimes without statutory sentencing circumstances” and the median of statutory sentences, some scholars studied the “means of declared sentences for crimes without statutory sentencing circumstances” of larceny, the crime of intentional injury, the crime of traffic offences and the crime of robbery, and they drew the conclusion that “the means of declared sentences for crimes without statutory sentencing circumstances are generally lower than the median of statutory sentences” (Bai, 2014, p.85). In this study, this conclusion is verified by the “means of declared sentences for crimes without statutory sentencing circumstances” in the crime of private entrepreneurs’ misappropriation by virtue of position and the crime of non-government employees’ accepting bribes, which to some extent shows that the penalties for private entrepreneurs’ corruption crimes are homogeneous to the penalties for other crimes. But such homogeneity is inadequate to prove that crimes and penalties are balanced. As shown by the Spearman rank correlation coefficient, under the basic composition circumstances in the crime of misappropriation by virtue of crime and the

crime of non-government employees’ accepting bribes, crimes and penalties are highly balanced; but under the aggravating composition circumstances, crimes and penalties are much less balanced, showing that judicial authorities have more discretion in the sentencing in the cases involving huge amounts.

In fact, an important reason for the long-standing questioning of China’s judicial fairness is the lack of standardization in sentencing. In order to address this problem, the Supreme People’s Court and other authorities promulgated the Guiding Opinions on the Sentencing by the People’s Court (for trial implementation), the Opinions on the Several Issues concerning the Standardization of Sentencing Procedures (for trial implementation), the Notice on the Implementation of the Standardization of Sentencing, and the Guiding Opinions on the Sentencing for Common Crimes. On January 1, 2014, the courts across China began to officially implement the standardization of sentencing. But this study shows that currently, “arbitrary” sentencing still exists, and the reason is the inadequate elaboration of the existing Guiding Opinions on the Sentencing by the People’s Court.

According to the report of the Eighteenth National Congress of the Communist Party of China, “efforts should be made to promote scientific legislation, strict law enforcement, judicial fairness and law-abiding by all the people”. Therefore, balance between crimes and penalties is an essential part of judicial fairness. Therefore, in this context, the range of sentencing for private entrepreneurs’ corruption crimes should be further elaborated through the reference to the legal instruments published online and the guiding cases published from time to time by judicial authorities, based on the proportions of the sentencing circumstances in specific sentencing specified in the Guiding Opinions on the Sentencing by the People’s Court, and in combination with the amount criteria for crimes set forth in the criminal law. In the comprehensive deepening of reform and the fight against corruption through the rule by law, this is not only an inevitable requirement but also an inherent part of judicial fairness.

CONCLUSION

To sum up, importance should be attached to the countermeasures against private entrepreneurs’ corruption crimes because of the harms of such crimes. Owing to the significant difference of enterprises’ “top leaders” and “department heads” in the types of crimes, different countermeasures should be taken based on the types of crimes. Criminal penalty is an important link in crime prevention, but the imbalance between crimes and penalties will not only undermine the effect of the enforcement of penalties, but also seriously damage judicial fairness. Therefore, suitable countermeasures should be taken to standardize sentencing.

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