

Research on the Perfecting Path of Criminal Responsibility of Unit Crime Subject

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Abstract

To build a law-based business environment, implement the criminal policy of "tempering justice with mercy", in the field of unit crime in the criminal responsibility of unit crime subject in China began to try to explore the enterprise compliance Non-prosecution system, the criminal responsibility of unit crime subject shows a trend of leniency. At present, the investigation of the criminal responsibility of the subject of unit crime is controversial in the qualification of the subject of unit crime, and the punishment mechanism of the subject of unit crime is also facing many problems. In the future, perfecting the criminal responsibility of the subject of unit crime should start from legislation and judicial practice. On the one hand, it should make clear and perfect the subject qualification of unit crime and the criminal punishment mechanism of the subject of unit crime. On the other hand, in practice, we should update the identification standard of criminal responsibility of the subject of unit crime and actively explore the mode of Non-prosecution of enterprise criminal compliance, so as to construct the path of criminal responsibility investigation of the subject of unit crime in line with the situation of Our country.

Keywords

Unit Crime; Unit Crime Subject; Criminal Responsibility; Enterprise Compliance.

1. The Raising of Questions

The subject about the unit crime in China's criminal law, the scope of criminal liability prescribed in article 30 units and article 31 of the unit crime punishment principle, thus it can be seen on unit crime criminal responsibility shall be investigated for criminal law to follow whatever special natural person crime subject or unit for the unit can be regarded as unit crime, can be investigated for criminal responsibility according to law. Although the subject of unit crime has been legislated and clarified, the qualification of the subject of unit crime lacks of detailed provisions. At the same time, the subject about the unit crime shall be investigated for criminal responsibility without specific operability sentencing rules, which directly led to the unit crime criminal liability of unit crime in the courtroom accurately identified lack of objective law [1](see Chen Lvwen. Criminal liability of unit crime basic problem [J]. Legal expo. 2021 (12) : 57.) In recent years, in view of the criminal responsibility of the subject of unit crime, the judicial practice actively explores the Non-prosecution of enterprise compliance led by the procuratorial organ. As the control mechanism of internal illegal and criminal behaviors of enterprises, enterprise compliance is of great significance in promoting the punishment of criminal responsibility of the subject of unit crime in China's criminal law. Therefore, to study the criminal responsibility of the subject of unit crime, it is necessary to clarify the qualification of the subject of unit crime.

2. Legislative Provisions and Qualification Recognition of the Subject of Unit Crime

2.1. Legislative Provisions on the Subject of Unit Crime

Article 30 of China's Criminal Law stipulates that "companies, enterprises, institutions, organs and organizations shall bear criminal responsibility in accordance with the law for acts that endanger society." Therefore, the law stipulates that the subject of unit crime includes five categories: company, enterprise, institution, organ and organization. From the Angle of crime constitution, the constituent subject of unit crime is the "special" subject stipulated by law. But from the Angle of investigating the criminal responsibility of the subject of unit crime, the legislative provisions obviously can not provide accurate basis for the sentencing of the subject of unit crime. In judicial practice, there are many complicated situations in the identification of the subject qualification of unit crime. To distinguish the criminal behavior of unit crime from the criminal behavior of individual natural person and clarify the criminal responsibility of unit crime, the author thinks that the following two aspects can be analyzed:

2.2. Determination of the Qualification of the Subject of a Unit Crime

First, judge whether the unit main body is legally established, whether real existence. China's relevant laws stipulate that the entity shall have property, name, location and other formal requirements, and shall register with the administrative department to obtain business qualification.

Second, judge whether the unit crime is under the overall will of the unit. Unit criminal behavior is the objective externalization of unit will, which must embody unit will. [2](See Du Wenjun. Outline of Criminal Responsibility of Unit Personality. Social Science, No.10, 2007.) Unit will refers to the behavior of the unit decided or approved by the decision-making organ or the person in charge of the unit, which is reflected in the way of act or omission. Third, to see whether the unit to carry out criminal acts for the interests of the unit. In unit crime, only the crime subject's criminal behavior is for the interests of the unit, can be identified as the unit crime subject carried out the unit crime. Therefore, the identification of the subject qualification of unit crime is the basis of investigating the criminal responsibility of the unit. Only with the subject qualification can the criminal responsibility of the unit crime be investigated.

2.3. Conditions for being the Subject of a Crime Committed by a Natural Person as a Unit

For the natural person to commit a crime by a unit, the behavior of a natural person should reflect the will of the unit and seek benefits for the unit. First of all, in the case of unit crime, as the artificial person in the legal relationship, the unit's will and behavior are mainly implemented and embodied through the behavior of natural person. Therefore, the dual identity of natural person in the unit crime increases the difficulty of the identification of the subject qualification of the unit crime and the unit criminal punishment. Generally speaking, natural persons who constitute unit crimes refer to managers or direct persons in charge who have the right to make decisions and have a greater say on the business and daily operation of the unit, which can reflect the overall will of the unit. Secondly, the illegal acts carried out for the unit to seek improper interests. In addition, if there is a legal provision that the management personnel or the direct responsible person with decision-making power seek personal interests in the name of the unit, the criminal liability shall be investigated for the crime committed by natural persons. It can be seen that natural persons commit crimes to seek illegal benefits for the unit is an important condition for identifying natural persons as the subject of unit crimes. To sum up, we need to clarify the qualifications of the subject of unit crime for the criminal responsibility of the subject of unit crime. And the provisions of the laws and regulations of unit

crime subject in our country, only five preliminary rules, no relevant specific judicial interpretation and the maneuverability of the subject qualification, the criminal responsibility subject to deal with in the practice of the unit crime punishment complex situation is far from enough, it does not provide a reference of standard unit crime subject, As a result, it is difficult and confusing to identify the subject qualification of unit crime in specific cases in practice. [3] (See Zhou Runyu. Research on the Subject Identification of Unit Crime in P2P Platform cases [D]. Shanghai International Studies University. 2020(01).) At the same time, due to the problems in the qualification identification of the subject of the unit crime, the relevant provisions on the criminal punishment of the subject of the unit crime also have some problems and disputes due to the ambiguity of the subject.

3. The Problem of the Criminal Responsibility Punishment Mechanism of the Unit Crime Subject

3.1. The Punishment Mechanism for Criminal Responsibility of the Crime Subject of the Unit

First of all, Article 31 of the Criminal Law stipulates the basis for punishing the criminal responsibility of the subject of the unit crime: "Where the unit commits a crime, the unit shall be fined, and the directly responsible persons in charge and other directly responsible persons shall be punished. Where there are other provisions in the special provisions of this Law or other laws, such provisions shall prevail." The article establishes the punishment principle of "double punishment system", which can impose penalties not only on the unit, but also on the directly responsible person in charge and other responsible persons. However, this provision is not clear about how to determine the specific punishment of the criminal responsibility of the subject of the unit crime, but only provides the main principles of the criminal responsibility of the subject of the unit crime. Due to the lack of substantive content, the lack of clear provisions on the punishment of criminal responsibility of the subject of the unit crime easily leads to the absence of uniform standards for the discretion of judges and the situation of different judgments in the same case, which greatly weakens the judicial credibility of the court, and the punishment of the criminal behavior of the subject of the unit crime lacks deterrence for the unit.

Secondly, the special circumstances of the unit crime subject punishment provisions. First, if the subject suspected of a unit crime is revoked, cancelled, revoked of its business license, or declared bankrupt, the person in charge directly responsible for it or other responsible personnel shall be punished, and the criminal responsibility of the unit shall no longer be prosecuted. Second, after the crime is committed by the subject of unit crime, if there is merger or separation, the subject who bears the rights and obligations of the original unit exists, the criminal responsibility of the unit shall still be investigated. Third, the criminal responsibility of the persons directly responsible or other persons directly responsible for the unit crime shall be investigated directly for the unit crime cases which are not prosecuted according to the unit crime. [4](Review of Customs Law.2018(00):182-196.)It can be seen that the provisions on criminal punishment for the subject of unit crime in China's legal system are very confused, which also brings confusion to the work of judicial staff in practice.

3.2. Theoretical Disputes on Criminal Punishment of Unit Crime Subjects

After the concept of unit crime was put forward, the theoretical circle has been disputing the criminal responsibility of unit crime. There are two viewpoints about the punishment mode of criminal responsibility for unit crime: single punishment system and double punishment system. The single penalty system thinks that the unit crime should not be punished, only the natural person. There is also a point of view that China's current unit criminal punishment

mode only double punishment system, but also does not exclude the legal special provisions of the single punishment system. No matter which kind of punishment mode, its backside all has corresponding theory support. However, in the theory of double punishment system, why does the unit crime punish the responsible personnel in the unit while punishing the unit? Does it constitute repeated evaluation? In the qualification of the subject of unit crime, the author thinks that the unit, as a legal artificial person, does not have the independent ability to carry out the crime, mainly through the responsible personnel of the unit, so the punishment of unit members does not belong to repeated evaluation. At the same time, according to the criminal law crime constitution theory, unit crime can be evaluated as a crime as long as it has subjective and objective aspects, while for unit members, because their individual will is the embodiment of the overall will of the unit, Therefore, it is no longer independently evaluated as natural person's crime [5](Guo Zhenyu. On the criminal responsibility of unit crime -- advocate of the theory of organizational criminal responsibility [J]. Modern Trade and Industry.2020(19):136-138.)But this does not mean that unit members can be immune from criminal punishment, unit will is realized through the behavior of unit members, the two are inseparable, Therefore, the criminal responsibility of the unit should naturally be jointly undertaken by the unit and its internal personnel [6](Yuan Jiayin. On the criminal responsibility of the unit crime -- from the perspective of "double punishment system for unit Crime" [J]. Journal of Hubei University of Economics (Humanities and Social Sciences Edition).2020(02):75-78.)

Therefore, as for the punishment theory of the criminal responsibility of the subject of the unit crime, the double punishment system better responds to the problem of how to establish the responsibility distribution between the two subjects of the unit and the members of the unit, while the punishment mechanism of the single punishment system cannot achieve the purpose of effectively combating crimes. In recent years, the procuratorial organs have begun to explore the implementation of the enterprise compliance Non-prosecution system for crimes committed within the unit: for minor crimes, they can be exempted from punishment according to the criminal law, and on the premise that the enterprise actively cooperates and adopts the compliance plan, they can make a decision to acquit the enterprise. To some extent, corporate compliance has the function of "finding crimes" in criminal law, and corporate compliance Non-prosecution is of great significance to the perfection of criminal responsibility of unit crime subjects.

4. Investigation of Criminal Responsibility of the Criminal Subject of the Unit and Enterprise Compliance

4.1. Whether Enterprise Compliance should have the Function of Criminal Law

According to the first viewpoint, based on the legal experience in Europe and America and the crime prevention function of corporate compliance management, corporate compliance should have the dual functions of entity crime detection and procedure crime detection. In terms of substantive law, corporate compliance can be the legal cause of innocence defense of the enterprise involved. In terms of procedural law, the procuratorial organ may decide not to prosecute according to the compliance of the enterprise. The second view holds that, after an enterprise commits a crime, the compliance system can only serve as a basis for an enterprise to reduce criminal punishment, but not as a legitimate cause for an enterprise to declare innocence. Supporters of this view also believe that compliance cannot be used as the basis for exempting an enterprise from criminal responsibility, but the procuratorial organ can not prosecute only after considering other factors such as the enterprise's criminal circumstances and the remedy measures of the unit. [7](See Chen Ruihua. Three modes of enterprise compliance crime [J]. Comparative Law Research, 2021(03):69-88.)The author believes that corporate compliance has the role of criminal incentive, and if it is incorporated into the

criminal law system, it can play the role of criminal law. And effective compliance program, on the basis of significant compliance incentive mechanism, for companies suspected of a crime, the effect of the procuratorial organs may, according to the compliance plan to determine whether to grant the unit crime subject to criminal punishment, given a lighter or mitigated punishment or be exempted from criminal out of compliance functions obviously more attractive than compliance leniency. From the perspective of China's practice, once an enterprise is declared guilty, its external image and financing will be greatly affected. And the decision to acquit the enterprise not only avoids the criminal punishment, but also has little influence on the foreign investment and administrative qualification of the enterprise. Therefore, enterprise compliance can be used as the basis of lenient sentencing and punishment for unit crimes, and can have the function of criminal law.

4.2. Analysis on the Mode of Compliance Crime of Unit Criminal Enterprises

Professor Chen Ruihua divides the forms of enterprise crimes into systematic crimes and non-systematic crimes, and puts forward three modes of enterprise compliance crimes: "subjective guilt exemption mode", "statutory management obligation fulfillment mode" and "compliance inspection exemption mode". These three modes make a comprehensive summary and analysis of the enterprise compliance crime mode. Among them, "subjective guilt exemption mode" refers to the compliance guilt mode in which enterprises establish and implement effective compliance plans to prove that there is no subjective fault in the criminal behaviors of their associated personnel, so as to exempt the unit from criminal responsibility. "Performance mode of statutory management obligations" refers to the mode in which an enterprise proves that it has fulfilled its statutory supervision and management obligations by establishing or implementing compliance management in the case of "dereliction of duty crimes", so as to exempt itself from criminal liability. "Exemption mode of compliance inspection" means that under the compliance inspection system, the procuratorial organ orders the enterprises which have constituted crimes to actively cooperate, actively correct and be included in the compliance inspection, and then decides not to prosecute according to the effect of compliance management. [8](Same the previous note.)The theoretical circle has two views on the study of enterprise compliance Non-prosecution at present: one is to establish the criminal compliance suspension Non-prosecution system; the other is to implement the enterprise compliance conditional Non-prosecution model. In the author's opinion, no matter what kind of Non-prosecution mode, it is relatively light compared with the criminal responsibility punishment of the subject of the unit crime, and corporate compliance is one of the factors to be considered for the "slight" punishment of the criminal responsibility of the subject of the unit crime.

To investigate the criminal responsibility of the subject of the unit crime by the way of compliance, the procuratorial organs no longer simply pursue "guilty will be punished", appropriately give up the right of national penalty, from the perspective of enterprises to pursue the maximization of social public interests. Urging and supervising enterprises to establish internal compliance system and preventing enterprises and their internal related personnel from committing crimes is a feasible way to reduce the criminal responsibility of the unit. But all of these are based on the accurate identification of the qualification of the unit subject. It plays a key role to perfect the investigation of the criminal responsibility of the unit crime subject and clarify the qualification of the unit crime subject.

5. The Improvement Path of Criminal Responsibility Investigation of Unit Crime Subject

The qualification of the subject of unit crime is related to the criminal punishment of the subject of unit crime. The provisions of our law on the punishment of unit crime provide the basis of punishment for the determination of criminal responsibility of unit crime. Under the trend of

"criminalization" of unit crime enterprise compliance, it is necessary for us to explore and actively perfect the path of investigating the criminal responsibility of unit crime subject in Our country.

5.1. Legislation

5.1.1. Make Clear the Subject Qualification of Unit Crime

The subject of criminal responsibility punishment for unit crime should not only include the unit itself, but also investigate the criminal responsibility of relevant responsible personnel of the unit. Unit crime has its particularity in the criminal law system, so legislation should also consider the particularity of unit crime subject, and formulate the personalized criminal responsibility punishment reflecting unit crime subject. Define the qualification of the subject of unit crime and the scope of the subject of unit crime, and provide clear legal guidance for the application of penalty. In other words, in criminal law legislation, the qualification of the subject of unit crime is clearly stipulated, which provides a standard for the recognition of the qualification of the subject of unit crime. The subject qualification of unit crime should have the three aspects mentioned above: establishment by law, unit will and unit profit. If a unit is established according to law, it has the corresponding criminal liability capacity and independent property to bear the legal consequences of its illegal acts. According to the will of the unit, the unit itself or the relevant responsible personnel can be punished. Unit profit-seeking is an important criterion to judge whether a unit constitutes a unit crime. Those who seek benefits for themselves in the name of a unit commit a crime for a natural person and pursue criminal responsibility for a natural person's crime.

5.1.2. Improve the Punishment Mechanism of "Double Punishment System" for Unit Crimes

In the legislation, we should construct a single punishment system which only penalizes unit crimes, and supplement the punishment jurisprudence of unit crimes and individual natural person crimes. [9](Same Note[1]).In a unit crime case, the person who bears the criminal responsibility for the unit crime is the unit or the relevant responsible person of the unit. If the unit crime is committed by multiple natural persons, and the individual evaluation of any natural person's behavior does not constitute a unit crime, but if it is evaluated as a whole, it constitutes a crime. In this case, only the unit is punished. Therefore, it is of great significance to construct a single penalty system which only penalizes units. Improving the punishment mode of the unit is also of great benefit to the identification of the qualification of the subject of the unit crime, which can ensure the legality of the criminal punishment of the subject of the unit crime and the special subject in the unit crime, and at the same time play the role of restricting the behavior of the responsible personnel in the unit. Under the vision of double punishment system, the unit and its members should bear the criminal responsibility respectively. The responsibility of the unit is not the burden of the unit members, but the unit should bear its own criminal responsibility, and the unit members should also bear the criminal responsibility of their own actions. Single punishment system and double punishment system, improve the justice of unit crime penalty.

5.2. Practice

5.2.1. Update the Identification Standard of Criminal Responsibility of the Criminal Subject of the Unit

The criminal Law has the character of lagging behind and constantly updates the identification standard of criminal responsibility of the subject of unit crime. In different periods, the nature of unit crime subject is changing constantly. With the development of The Times, new forms of unit organization and new contents of the business scope of units appear, such as online shopping companies, P2P network loans and so on. According to the interpretation of criminal

law to expand the interpretation method, new forms of enterprise organization, new business scope may be included. But at present China's current criminal law on the subject of unit crime provisions of the generality and lack of detailed identification standards and punishment mechanism exist problems, judicial practice in the public security department to the new form, the new content of the application of law when the lack of legal basis for conviction and sentencing, which is in violation of China's "statutory" principle. Therefore, the relevant judicial departments should timely update and supplement the identification standards of criminal responsibility of unit crime subjects, promote the unity of criminal responsibility punishment of unit crime, and prevent the judicial embarrassment of the same case in judicial practice and different judgments.

5.2.2. Explore the Mode of Non-prosecution in Compliance with Chinese Enterprises

In the process of exploring the Non-prosecution system of enterprise compliance, most procuratorial organs have adopted the "conditional Non-prosecution mode" and incorporated the enterprise compliance system into the existing public prosecution system. [10](See Chen Ruihua. Research on Non-prosecution System of Enterprise compliance [J]. Journal of Criminal Law in China, 2021(01):78-96)The establishment of corporate compliance system has the function of the criminal responsibility of the criminal subject of the unit. Civil law system and Common law system have two modes of criminal compliance: deferred Non-prosecution and conditional Non-prosecution. China's current relevant legal system has not established the enterprise compliance Non-prosecution system. According to the judicial practice, the procuratorial organs implement the procedure path of urging enterprises to establish the compliance system. Non-prosecution in compliance can be divided into "procuratorial suggestion mode" and "conditional Non-prosecution mode". From the point of view of practice in China, the conditional mode has relevant institutional advantages in promoting the establishment of effective compliance system of enterprises. The system of conditional Non-prosecution of enterprises is connected with the system of leniency of guilty plea, criminal reconciliation procedure and the system of conditional Non-prosecution of minors in China, which can provide referential experience for the procuratorial organ to explore the path of pursuing the criminal responsibility of the subject of unit crime in China. [11](Same the previous note.)

6. Conclusion

Compared with natural person crime, unit crime is a special crime form in criminal law. Although unit crime has been established in our criminal law, there are still many problems about unit crime. In addition, the lag of criminal law also leads to different standards for the qualification of the subject of unit crime. The provisions of the double penalty system have no specific implementation measures, and the punishment of units and natural persons is unclear, which increases the punishment of natural persons. Finally, in the context of the criminalization of enterprise compliance, there is still a great controversy in the theoretical circle. However, in judicial practice, the procuratorial organs have begun to explore the criminal compliance mode in accordance with China's judicial status quo. Only by defining the boundary between the unit and the natural person in the unit crime, recognizing the criminality of the unit as the subject of the crime, and recognizing the ability of the unit as the subject of the crime can we truly punish the unit as the subject of the crime. This paper focuses on improving the criminal responsibility of the subject of the unit crime and finds that the key to solving the criminal responsibility of the subject of the unit crime lies in the qualification of the subject of the unit crime. Secondly, the double punishment system established in China's criminal law can not distinguish the division of criminal responsibility between units and their members. At the same time, combined with the development trend of leniency of criminal liability investigation

of unit crime subjects, the paper holds that it is necessary and practical experience basis to construct Non-prosecution of criminal compliance in China. There is still a long way to go to investigate the criminal responsibility of the subject of unit crime in China!

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