

The Risk and Coping Strategy of Preventive Criminal Law

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Abstract

Preventive criminal law is an important legal achievement formed based on the needs of national tasks and citizens in the critical period of social transformation, aiming to prevent criminal law risks. However, from the reality, the preventive criminal law has the excessive hidden worries of criminal law, the arbitrary breeding of judicial crisis, and the risk of imbalance of criminal law function. Fundamentally speaking, preventive criminal law has not completely eliminated the traditional criminal law theory, and the boundary of preventive criminal law and the scope of legal protection combined with the key issues of social transformation. Therefore, this paper will deeply study and analyze the preventive criminal law risks and solution measures.

Keywords

Preventive Criminal Law; Risk; Solution Measures.

1. Introduction

In the critical period of social transformation, upgrading and development, social security issues still emerge in an endless stream. Some cyber crimes, terrorism, road traffic accidents and major infectious diseases have not been effectively solved, seriously threatening social security. In order to cope with the threat of social security, criminal legislation activities gradually to preventive criminal law, preventive criminal law is gradually penetrating criminal law system at the same time, the later processing to prior prevention, effectively advance the criminal law intervention benefit protection point, the prevention and control of social risks, maintaining social stability and security has a positive role. Preventive criminal law, fundamentally, is to prevent the infringement of legitimate rights and interests, no longer take the infringement of legal interests as the basis of criminal responsibility investigation, and pay more attention to the protection of legitimate rights and interests at the legal level in advance. However, there are some defects and risks in the legislation and judicial aspects of the advance prevention and protection of preventive criminal law.

2. The Main Risks of Preventive Criminal Law

(1) Legislative risks. From the legislative level, the preventive criminal law belongs to the prevention and judgment in advance, and there is the problem of excessive criminal law. Fundamentally speaking, preventive criminal law is the national punishment right, which mainly limits the right of civil freedom. From the perspective of actively preventing risks in preventive criminal law, it is easy to make the public cause misunderstanding and ignore the problem of the expansion of punishment right. The poor grasp of standards and measures is easy to cause new threats to civil freedom and rights. First of all, the rational negotiation of criminal legislation is insufficient, and social risks simply emphasize democratic legislation, ignoring the public security demands and opinions. Once social risks break out, it is difficult for the public to obtain security help through criminal legislation. But strong public opinion, legislators in order to better meet the public demands, rapid legislative measures and

mechanism although on the surface to meet the needs of the public security, also maintains the responsibility of the government and legal departments image and legal authority, but it is difficult to effectively form social control, public opinion effective guide some excessive crime. Secondly, the preventive criminal law stays at the symbolic and passionate level of legislation. Preventive criminal law is more reflected in the response to people's safety expectations, paying attention to and exaggerating some social risks. Preventive criminal legislation is easy to generate the surging public opinion response in the rapidly fermenting Internet environment, while effectively solving the shortcomings and forming the redundancy of legislation. Finally, the preventive criminal law covers up the risks and defects of social governance to varying degrees. Criminal law should be the ultimate means of social governance, and the general social risk problems still need to be realized by social governance means. The intervention of preventive criminal law in social risk governance increases the sense of security of safe life, but ignores the reduction of social risk and moral education. The excessive dependence on criminal law prevention is also easy to cause the problem of "lazy government".

(2) Judicial risks. The intervention of preventive criminal law should be based on the needs of crime prevention, which has a positive role in reducing the responsibility of judicial personnel to prove the crime. However, excessive intervention or inaccurate grasp of the scale is easy to cause judicial arbitrary risk. At the level of crime prevention, the preventive criminal law does not deeply study and grasp the problems and causes of the elements of crime, which leads to the too simple setting of the elements, the vague content and the public. First of all, the setting of preventive criminal law norms is too vague, which provides a breeding ground for judicial arbitrariness. For example, in the provisions of preventive criminal law, there are many evaluation concepts such as illegal use and drunk driving. The value of things has different conclusions for different judgment subjects, and the concept of vague evaluation provides the survival soil for the expansion of judicial power. Second, the preventive criminal law dangerous legislation is abstract, no longer on the basis of results or danger, vague, abstract crime in criminal proceedings for judicial personnel do not need to bear the corresponding burden of proof, from the evidence link and result crime charges smoothly and quickly, but the judicial personnel discretion increasing at the same time easy to lead to random and uncertain crime. Finally, the perspective of preventive criminal law is easy to cause the problem of the popularization of the protection of legal interests. Preventive criminal law no longer bases on concrete personal legal benefits, but pays more attention to public safety, social tranquility and other contents. For example, the interpretation of the concept of legal benefits is that legal benefits protection is more and more abstract, and it is difficult to accurately prove that each clearly describes and judges the real consequences and influence of legal benefits. In general, the judges cannot judge the definition of public legal interests and the motive behind the behavior of relevant personnel, and the large discretion space is easy to breed the risk of judicial arbitrariness.

3. The Response and Mitigation Strategy of Preventive Criminal Law Risks

(1) Screening through and making it clear that legal benefits should be protected. In order to solve the problem of legislative and judicial risks of preventive criminal law and prevent some irrational expansion of excessive behavior, it is necessary to screen and clarify the legal interests of preventive criminal law should be protected and delimit reasonable boundaries, and clarify the legal interests of safeguarding the fundamental interests of citizens. First of all, the preventive criminal law should protect laws, to deal with the collective law, public security and personal interests, clear the important basis of criminal punishment, and protect individual interests associated at the same time, digging and analysis of personal public order and public interest environment, combined with specific circumstances with personal legitimate rights

and interests of criminal law protection. Especially the key period of social transformation, based on the social citizens' better life demand, interest demand legitimacy, with the right attitude to understand the preventive criminal law in the social key transition risk, truly from governance social risk, protect public security, maintain social order, safeguard public health, not involving personal benefits of public law should be removed by preventive criminal law. Secondly, it is necessary to clearly define the causes and consequences of the legal interests of preventive criminal law, sort out the relationship between collective legal interests and personal legal interests, and strengthen the intervention and prevention of the scope of intervention from the prevention of preventive criminal law. Of course, this causal connection of legal benefits is not only the connection of content, but also the connection of essence. Think about the ultimate purpose from the purpose, truly safeguard the maximization of the benefits of various methods, and safeguard the legitimate rights and interests of people's life, health and freedom. Such as the criminal law amendment (8) " dangerous driving crime, by maintaining the road traffic safety road traffic, safeguard the life safety and health, ensure the safety of major public and private property, fundamentally realized the fundamental purpose, in the use of means and achieve purpose also has substantial relevance. Finally, the legitimate rights and interests of preventive criminal law are defined from the considerable causal relationship. The essential purpose of collective legal interests and public security law is to protect the public legal interests of more individuals. In the preventive criminal law, the collective legal interests and the public security law interests need to prevent the infringement of collective and public security. It is necessary to curb the behavior that may produce the damage result to legal interests, and reasonably limit the punishment scope of the preventive criminal law, such as environmental pollution, production accidents and other harm and results that do not cause serious damage to people's life, health and safety. Preventive criminal law needs to create a boundary of collective legal interests and public security law based on the legitimate rights and interests of individuals, and effectively guarantee it from environmental resource protection, production safety and personal information security management.

(2) The last means is intervened by the preventive criminal law. The intervention of preventive criminal law must be the last stage when the comprehensive management and other means play a limited role or cannot play a role. Because criminal law is the most severe punishment means for any public, it has the right to restriction and deprivation of civil freedom, property and life. On the basis of ensuring the legitimacy of the purpose of setting, the preventive criminal law can not be adopted in the final stage. First of all, the use of preventive criminal law is used to prevent accidents from causing uncontrollable and inestimable dangers to the collective legal benefits and the public security law benefits. Preventive criminal law prevents acts that cause harm to collective legal interests and public security law interests. Compared with personal legal interests, it is mainly about the damage degree and danger of opinion interests, so as to ensure the boundary and legitimacy of preventive criminal law. If the liability for damages, the preparation and attempt can not be regulated through the preventive criminal law. Secondly, the use of preventive criminal law is based on the collective legal benefits and the public security law benefits, which causes an intolerable and immeasurable danger to the victims. The right to social self-help is more obvious, everyone may not form the verbal harm of others, for some people, this degree is intolerable, but it is impossible to punish and prohibit these verbal harm, otherwise it is in conflict with the relevant laws of freedom of action. Therefore, the use of preventive criminal law also needs to consider the tolerance of behavior risk, the corresponding risk benefits, the corresponding risk prevention cost, after the effectiveness of relief to safeguard benefits. The pre-legal protection of preventive criminal law must be based on the appeal of the victim, and the degree of the victim cannot be analyzed from the aspects of economic strength and social status. Fundamentally speaking, preventive criminal law and

"protector", both public and individual rights, are the protection of individual citizens' rights and freedom.

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