

Research on Criminal Laws and the Regulations of Labor Conflicts in P.R. China

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ABSTRACT

With the aggravation of labor conflicts, some of the problems faced by labor-management relations can no longer be regulated by civil or administrative laws, but may exceed the boundaries of criminal law, which provides more possibilities for the regulation of human-capital relations. This is a manifestation of the expansion of the function of criminal law protection in the field of labor, but the modesty of criminal law also requires prudent punishment, decriminalization and restriction of the criminal circle. To understand this contradiction in China, we should grasp the roots of its particularities. On the one hand, it is based on the substantial inequality of the economic status of labor relations; while on the other hand, it also raised the necessity for the protection of labor interests. These particularities determine the basic directions of labor criminal law in the future, that is to say, crimes committed by workers should be decriminalized and lightly punished; crimes committed by employers should be moderately criminalized and heavily punished; and collective labor conflicts should be decriminalized and lightly punished.

KEYWORDS

Labor related criminal law; Labor conflicts; Labor relations; Decriminalization.

At present, China is in a period of social transformation and reform. Although the awareness of workers' rights has been generally raised, the scope and extent of the protection of workers' rights and interests are still in the initial stage, leaving legislative deficiencies and even blank areas in many aspects. The solution of labor relation problems is characterized with such situation. In face of this, President Xi Jinping (2011) of PRC once put forward "to take building harmonious labor relations as an important and urgent political task to grasp and improve". In terms of the entire legal system framework, the prominent problem of labor rights protection in China is manifested in the incomplete criminal law protection of labor rights and interests. There are only a small number of relevant articles in actual legislation, and systematic norms have not yet been formed. At the same time, the academic research literature on this issue is also extremely limited. Such a legal system can hardly meet the urgent requirements of protecting the rights and interests of workers and building harmonious labor relations. Therefore, this issue, especially the basic direction of China's in the transition period, has yet to be studied in greater depth.

1. Current status and problems of China's labor related criminal law

There has been little discussion on labor related criminal law in our country's academic circles, and in fact it has not yet formed a sub-discipline under criminal law. The relevant norms are scattered in the Criminal Law and its subsidiary criminal laws, focusing on the protection of labor relations. For example, subsections of the Criminal Law include the crime of ordering illegal risky operation, the crime of major liability accidents, the crime of major labor safety accidents, the crime of fire-fighting

liability accidents, the crime of forcing employees to work, the crime of employing child laborers to engage in hazardous labor, and the crime of refusing to pay labor remuneration, etc. Some scholars also believe that the crime of abuse of power and the crime of negligence of duty stipulated in Article 397 also fall within this scope (Tao, 2021). In addition, it is also embodied in the norms of subsidiary criminal law, including the Labor Law, which stipulates labor crimes by employers as well as duty-related crimes and dereliction of duty crimes by labor administrative departments; the Labor Contract Law, which stipulates the crimes of forced labor, and other norms of subsidiary criminal law; the Work Safety Law, which covers various types of liability accident crimes and market economy crimes; the Law on the Protection of Women's Rights and Interests, which provides for labor crimes that infringe on the legitimate rights and interests of female workers; the Law on the Prevention and Control of Occupational Diseases, which stipulates labor crimes committed by hirers and abuses of power by the labor authorities; and the Provisions on the Prohibition of Child Labor, which provides for a variety of labor crimes that infringe on the legitimate rights and interests of child laborers, as well as labor inspection and supervision malfeasance, etc.

These criminal law norms cannot be called norms in the full sense. They are often constrained by other forces in protecting the rights and interests of workers as well as preventing and resolving social risks, making it difficult for them to play their due role. As the problem of labor relations intensifies, both the labor law and criminal law communities continue to advocate the creation of various labor crimes in criminal law. Although this helps to strengthen the protection of labor rights in criminal law and has a high degree of problem awareness and theoretical character, it has not been elevated to the status of a branch of criminal law, often resulting in individual issues being treated in a piecemeal manner. The realistic issues have become issues in their respective academic fields, which cannot be systematized, making it difficult to truly realize the criminal law protection of labor relations. Of course, the intervention of criminal law in labor relations has been a real and urgent need for social development. So, what are the problems with China's legislation? The legislative tendency of criminal expansion has strengthened the protection of workers and achieved the purpose of punishing crimes and maintaining social order to a certain extent. However, the modesty of criminal law requires the constraints of the criminal law community, and punishment should be lenient. Therefore, how to reconcile the contradiction between moderation and expansion has become an important issue.

1.1 Whether criminal law modesty can effectively prevent and control labor crimes

The so-called modesty of criminal law means that "legislators should strive to obtain the maximum social benefits with the minimum expenditure - effectively preventing and resisting crime - with less or even no punishment" (Chen, 1998). Professor Zhang Mingkai (1999) also pointed out that "the modesty of criminal law means that criminal law controls the scope and degree of punishment according to certain rules, that is, if other laws are sufficient to suppress a certain illegal behavior and protect legitimate rights and interests, it will not be designated as a crime; if the application of lighter sanctions is sufficient to suppress a certain criminal behavior and protect legitimate rights and interests, heavier sanctions should not be stipulated". As the basic criminal policy of modern criminal law, the principle of modesty is essentially a reflection of the idea of "prudent punishment", that is to say, strictly controlling the breadth and depth of criminal law intervention in social life to prevent citizens' human rights from being violated, and questioning the protection of human rights principles in the process of regulating social life.

Criminal law is the most severe means of regulating social behavior and is also the "safeguard law" for other sectoral laws. The legal treatment of a certain social behavior should have a certain hierarchy, with a wide range of adjustments and space for civil, administrative and social legal norms, while criminal law can only be the final sanction. This requires that criminal law cannot intervene extensively in some areas of social life that should be regulated by other legal norms. Only when a series of other measures fail to rectify a social conflict which remains irreconcilable can the purpose of social governance be realized through the use of criminal law. Therefore, criminal law should emphasize its

own modesty.

In accordance with the principle of the modesty in criminal law, it is generally recognized that crimes should be punished under certain restrictive conditions. The first consideration is the seriousness of the infringement of legal interests. From any perspective, the severity of a violation of legal interests by a certain act is intolerable to the vast majority of people, and it would be a denial of justice if not sanctioned by criminal law. Secondly, apply all other sanctions. Other sanctions against a certain conduct will not be able to curb it and will not be sufficient to protect legal interests. Thirdly, it will have a positive effect. The use of criminal law to punish the behavior can achieve the effect of prevention or control, and will not lead to the prohibition of some socially beneficial behavior or unreasonable restrictions on people's freedom (Zhang, 2009). These limitations also indicate that criminal law is not the first legal norm to intervene in the adjustment of social relations. It needs to consider more the infringement of the interests of the law itself and the social effects of punishment methods.

The issue of labor relations is essentially a matter of economic interests between labor and management. It may manifest as a dispute over the rights and interests of workers. Rights disputes can be responded to under the current legal settlement mechanism, while the core issue of interest disputes lies in the negotiation and communication between labor and management. The purpose of all settlement mechanisms is to bring labor-management conflicts to labor-management cooperation. In this process, the role of the law is to facilitate communication and reach an agreement between the two sides, while mandatory means can only be the final guarantee, and criminal sanctions should not be the first consideration when infringement of workers' rights and interests affecting the social order occur. From the perspective of the cost of applying the law, we should maximize the most effective social benefits with the least possible expenditure. That is to say, we should achieve comprehensive social governance based on "prudent punishment", so as to effectively prevent and control the occurrence of crimes. In addition, if the scope of criminal law intervene is too broad, it will have a negative impact on society and the economy, hindering scientific and technological progress as well as social development.

1.2 Whether the expansion of criminal law is contrary to the spirit of moderation of criminal law

It goes without saying that criminal law has a tendency of expansion in the field of labor relations. This means that criminal law is more widely involved in social governance, and the means of criminal law are more often used to prevent and control various illegal behaviors. In reality, it is common for local governments to intervene in labor disputes, especially group labor disputes, in the name of criminal law. Firstly, the government will intervene in mediating disputes by administrative means. When administrative actions do not produce corresponding effects, the incident will face the risk of further expansion. At this time, the judicial authorities will use traditional criminal law crimes to convict and punish the "leading" workers. Some commentators believe that these workers who defend their rights through collective action have neither the subjective intent to disturb social order nor the objective consequences of disturbing social order, and therefore cannot be convicted of "crime of assembling crowds to disturb social order" (Niu, 2017). Some commentators also suggest that labor relations belong to the category of labor autonomy, and local government intervention will exacerbate the development of the situation, which may lead to more serious mass incidents, or even social and judicial injustice, destabilizing the society (Yuan & Yi, 2015). Therefore, it is concluded that labor disputes are economic disputes, criminal law should not be involved in labor relations. On the contrary, in the history of development labor relations in Western countries in the past century, especially after World War II, some European countries, America, Japan and other developed countries have strengthened the use of criminal law to protect labor rights through actual laws or case law. As a kind of criminal law for adjusting labor relations, it is one of the most important and influential disciplines in modern Western criminal law, and has become a prominent discipline in developed market economy

countries.

These issues bring us to the question of whether criminal law can intervene in labor-management relations. If the answer is "yes", then in what way can the criminal law intervene in labor-management relations to realize the principle of criminal justice? In the current labor relations pattern of "strong capital and weak labor", if the law only upholds the freedom of contract based on the autonomy of labor and capital, and fails to face up to the serious imbalance of economic status between the two sides, it will only make legal construction beneficial to capital and unfavorable to laborers, which will continue to intensify the potential conflicts between labor and capital. China is in a period of comprehensive transformation, and the current "risks" are not only common in market economy countries, but also have the particularity and periodicity of the society during the transformation period. Therefore, the task of criminal law should not be limited to the sanctioning crimes, but should intervene more promptly, deeply, and extensively in the prevention and control of various social risks, in order to meet the increasingly strong demands and expectations of the people for national security, social security, and personal security (Yu, 2016). In addition, labor law is only the first line of legal defense against labor-management conflicts, with its function limited. When labor conflicts exceed the defense line of labor law, stricter criminal law is necessary to protect the implementation of labor law and produce positive effects. This raises the issue of criminal law intervention in regulating labor relations.

The expansion of criminal law in the field of labor relations will bring about a series of changes in concepts, policies, and other aspects. At the same time, the breakthroughs in modesty may also have an impact on practical work. It is worth noting that the convenience brought by the intervention of criminal law in labor relations to relevant departments may easily lead to the tendency of "omnipotence of the criminal law". In fact, it may make it more difficult to distinguish between general violations of the law and criminal crimes. Overreliance on criminal sanctions for serious issues in labor relations may cause overlook on the autonomy and social governance of labor relations. If the adjudicator fails to apply criminal law accurately, there is a risk of unduly expanding the scope of criminal sanctions. When a new conviction is declared, the lack of relevant standards in judicial practice may lead to the abuse and misuse of penalties, resulting in adverse consequences. This is detrimental to the modesty of the criminal law as well as the autonomy in labor relations and social governance.

1.3 Lack of unified standards for identifying "serious circumstances"

Before the promulgation of Amendment VIII to the Criminal Law of the People's Republic of China, "serious circumstances" were the constitutive elements of the crime of forcing employees to work. The revised crime of forced labor stipulates a higher statutory penalty for those with serious circumstances, which means that "serious circumstances" are only a condition for upgrading the statutory penalty of forced labor crimes but not the boundary between crime and non-crime. In other words, as long as there is forced labor behavior that is not particularly harmful to society, it can be classified as forced labor crime, which more comprehensively and effectively guarantees labor rights. However, although the Commission of Legislative Affairs of the NPC Standing Committee interprets "serious circumstances" as "forcing multiple people to work, forcing others to work for a long time, and treating forced workers with inhumane means, and the specific standards should be determined by the judicial organs based on the actual situation", the highest judicial organs have never clearly defined the specific standards for "serious circumstances" through judicial interpretation. In practice, determining whether the criminal act of forced labor is serious can only be determined by the value of judges. However, each judge may have different considerations and judgements facing the same factor, leading to the phenomenon of "different verdicts in the same case". The principle of legality requires that the provisions of criminal law must be clear, and the lack of unified standards is inconsistent with the principle of legality.

2. Specificity of criminal law intervening in labor relations issues

Proposals on the involvement of criminal law in labor relations are determined by the special attributes of labor relations. If the special attributes are ignored, criminal law will lose its normative role

in building harmonious labor relations, and it will not be able to reasonably play its guiding role in regulating labor relations in China in the future. This paper believes that the special characteristics are mainly manifested in the following two aspects.

2.1 Substantial inequality in the economic status of labor relations

The labor relationship between workers and employers is not simply a general civil relationship between equal subjects, and it is impossible to replace a "concrete" person with an "abstract" person. When labor is combined with capital, it is inevitably dependent on capital, and the personal dependence of workers on employers is not merely a general civil contractual relationship of equal status.

Any legal norm regulating labor relations must face the distinction between the socially or economically strong and the weak with substantial distributive justice. Neglecting the characteristics of "concrete" human beings and viewing them only from the perspective of social or economic equality will lead to many controversies. Even though labor laws provide for the protection of workers, they are still in a disadvantaged position, which can be proven from the following aspects: firstly, workers' rights protection takes economic and time costs. The time cost paid by the labor will have a certain impact on their living conditions, career choices and development, and even the expected income. It is often difficult for an employee with a record of arbitration or litigation against a past employer to be accepted by the new employer. Despite the economic and time costs incurred by the employer in the course of a labor dispute, the production and operation status of the enterprise will remain basically unchanged compared to the costs incurred by the worker, and will not be affected by an individual worker's resignation or litigation. Secondly, workers' defending their own rights in labor disputes would be considered "disloyal". Even if a worker is in a favorable position in arbitration or litigation confronting the employer and the labor relationship is maintained, the employer would have formed a moral evaluation of him or her as "disloyal". This means that the worker is still in a disadvantageous position because his or her career development is virtually shortened. In fact, although workers often claim their rights at the expense of leaving their jobs, the vast majority will accept infringements of their rights in exchange for the stability of labor relationship.

It is the rational understanding of the substantive inequality in labor-capital relations that makes this necessity possible. Under the regulation of labor law, the legitimate rights and interests of workers are guaranteed through the performance of labor contracts, but this does not eliminate the possibility of capital's infringement on labor in reality. In pursuit of their own interests, capital owners lack the motivation to improve labor conditions and remuneration without coercive protection. However, capital owners have the natural convenience of labor infringement, while it is often difficult for workers to take convenient and effective measures to protect their rights. Therefore, it is particularly necessary to address the serious conflict between capital accumulation and labor protection, at least by providing capitalists with a clear bottom line for accumulation. At the same time, we can also theoretically discover that social law principles favor legislation and protect vulnerable groups. It is the concept formed by the identification of the "status" of vulnerable groups in society that breaks through the principle of "ideological autonomy" and "equality and freedom" in the field of private law, laying the theoretical foundation for the formation and development of labor criminal law, and laying a solid foundation for the establishment and implementation social law (Dong, 2001).

2.2 Urgent demand for the protection of labor law benefits

Clarifying the concept of legal interests is of great significance to its construction. The requirement for protecting legal interests determines the necessity of intervention in labor relations, and legal interests also determine the content and scope of intervention in labor relations. The legal interests of labor correspond to labor rights, which means that the legal interests of labor are expressed in legal norms in the form of workers' rights. If we look at the current protection of labor rights from the perspective of fairness and justice, we will find that the problems are mainly reflected at the level of system construction, manifested in deficiencies in right protection, rule protection, and opportunity

protection (Xu, 2006).

At the level of rights equity, the lag in the protection of workers' rights in economic development reflects institutional problems in the dispute resolution mechanism. Equity in rights requires that under the current system of labor relation rules, all workers have the right to join the system without discrimination based on status; and that workers have the right to express their opinions when their rights are not equitably safeguarded. The economy and society have made great progress and development, but labor disputes continue to occur. On the one hand, it reflects that the rights of workers are not guaranteed in step with the economic development; on the other hand, it also shows that there are defects in the existing dispute resolution mechanism, which has failed to solve the issue of workers' rights and interests.

At the level of equity of opportunity, the disparity of opportunity between workers and enterprises due to different economic status hinders their communication. Equality of opportunity requires workers to share social gains and bear social risks. In labor relations, workers should be able to enjoy the opportunity for joint decision-making rather than being dominated by enterprises. In labor relation governance, it is necessary to address the issue of different opportunities between workers and enterprises in terms of obtaining enterprise development results, bearing risks, and participating in the enterprise's decision-making on labor relations.

At the level of fair rules, the mechanisms for regulating the behavior of workers and enterprises have not been effective. Rule fairness requires that both workers and enterprises should fairly abide by the formal rules regulating labor relations and informal rules such as ethics, morals and social customs. To build harmonious labor relations, the first step is to fairly apply legal rules to workers and enterprises, conveying the sense of equity and justice in every case. In the management of labor relations, it is necessary to use not only legal means, but also ethics, morality and social customs on labor relations, and these informal rules will play an important role in labor-management disputes.

2.3 The future protection of labor rights in criminal law

The Amendment VIII to the Criminal Law does to some extent protect the legitimate rights and interests of workers, but for ordinary workers who are unable to safeguard their own interests, relying solely on this cannot fundamentally protect their rights and resolve their demands. Only by continuously establishing practical criminal law mechanisms for protecting the rights and interests of workers and improving relevant legislation can workers truly obtain access to legal aid. The current laws in China strive to provide sufficient protection for children's legal rights. However, although some laws protect the interests of minors to a certain extent, they fail to play a full role in the social reality of child labor. In recent years, unscrupulous factories have continued to use minors to obtain cheap labor, resulting in a large number of minors dropping out of school early, which has seriously affected their normal study and life. At the same time, as teenagers are in the initial stage of physical and mental development, entering the labor market too early will cause immeasurable harm to their bodies, while their physical and mental health should receive more protection. However, the current legal provisions in China only provide minor penalties such as ordering corrections and fines for recruiting child labor. Even if the recruitment of child laborers persists and the circumstances are serious, the corresponding administrative penalties will only be the revocation of business licenses and suspension of business rectification. These measures are not enough to deter perpetrators from hiring child labor. For them, even with the harshest punishment, they can still derive huge benefits from hiring child labor. Therefore, the recruitment of child labor should be punished more severely, and even elevated to the status of criminal law protection.

3. Future direction of China's criminal law construction in labor relations

To solve the dilemma of the construction of criminal law in labor relations in China, the future direction should be researched through the system level on the basis of grasping its special attributes, so as to make the intervention of criminal law in labor relations effective and instructive.

3.1 Towards the regulation of worker crimes: decriminalization and lighter punishment

The decriminalization of workers' crime can be measured by the criterion of Social Considerable Theory. The Social Considerable Theory (Soziale Adäquanz) is pioneered by Welzel, a German purposive behaviorist, as a concept for deterring the illegality of behaviors. This theory holds that the common life of society is based on the constant restriction of freedom of actions within certain limits; if the law prohibits all objectively unlawful infringements on legal interests, then the entire social life cannot but cease at once, leaving a museum-like world which is only to be viewed (Gao, 2023). Therefore, all violations should not be prohibited, and all actions within the historically formed social and moral order of community life are socially equivalent" (Huang, 1999).

At the functional level of Soziale Adäquanz behavior is in fact necessary and usual for social life. A coexisting society is a functional world in which all "legal interests" are necessarily and consistently in the reciprocal exchange of actions and reactions, that is, in a living function (Zhang, 2023). Furthermore, Soziale Adäquanz is underpinned by the value dimension. The rules that govern functional social life are not merely a *de facto* habitus, but also a historical order, formed and developed out of conditional relationship between *de facto* organisms (e. g., technological developments) and the values by which the social community evaluates the various existing things. Only by adding this dimension of normative value can Soziale Adäquanz become an intrinsic principle of legislation (Qin, 2023).

The core elements of Soziale Adäquanz lie in its sociality and reciprocity. Sociality first includes social integrity, that is, conformity with the consciousness and opinions of the majority of people in society; second, social generality, that is, conformity with the prevailing awareness and values of the society at the time. Reciprocity includes: firstly, extensiveness, which means the behavior is widely existed in society and is known to the public; or although it is merely obvious in a certain field, it is familiar to the people in that field and shows extensiveness in the specific region or industry. This extensiveness reveals its close connection with people's lives, and also represents high social attention, highlighting the necessity and urgency of the corresponding legal intervention. Secondly, common sense, or empiricism, which means that it is in line with people's empirical and common sense judgment within the scope of public cognition (Chen, 2010).

Soziale Adäquanz serves an important function in setting the boundaries of criminalization of workers. First, it is an important basis for the rationalization of rights. The Constitution guarantees the fundamental human right to life and physical freedom, whereby no one shall be subjected to insults, intimidation, violence, assault or unprovoked intrusion into premises. The use of controversial means that make it impossible or difficult for the employer to resume production (e.g. arson, active destruction of the employer's machinery and equipment) is an abuse of rights and lacks legitimacy. Secondly, Soziale Adäquanz is distinguished from all deterrents against illegal behavior. The difference between them lies in the fact that the socially considerable behavior is the usual and normal behavior within the order of social life, while illegal behavior is deviated from the basic order of normal life since the very beginning, and thus is based on an exceptional situation (Zhao & Cheng, 2015).

Under the Social Considerable Theory, the reality of decriminalization of worker crimes arises. In fact, it is a special rule of crime and punishment derived from the Social Considerable Theory, applicable to labor-management conflicts. On the one hand, decriminalization should be applied to the minor circumstances of workers' crimes. For example, workers should be exonerated for minor acts such as disrupting an enterprise's production to counter the employer's refusal of collective bargaining. On the other hand, workers who commit more serious crimes should also be considered decriminalized. If a worker commits a series of destructive acts in the course of defending his or her rights and interests, consideration may be given to mitigating, alleviating or exempting his or her punishment based on a guilty verdict.

3.2 Towards the regulation of employer crimes: moderated criminalization and increased punishment

One of the more common crimes in the area of labor relations is labor crime committed by employers. In recent years, safety accidents have occurred frequently in China's production sector, seriously endangering workers' right to life and health, causing extremely negative social impacts and posing severe challenges to China in the process of industrialization. Therefore, the appropriate criminalization of employers' crimes mainly involves adding provisions for crimes that seriously endanger labour in the criminal law.

In addition, the criminal law protection for employers' violations of workers' legitimate rights and interests should also include the moderately severe criminalization of the offence, which is also an important element of regulating employers' crimes. Under the social conditions of modernized industrial mass production, employers have the legal obligation to protect the rights and interests of workers. Taking the crime of major labor safety accidents as an example, the harmful consequences caused by such accidents are more serious than those caused by ordinary negligence. Because of their own responsibilities, the perpetrators have certain obligations to pay special attention to "Safe Production Facilities or Safe Production Conditions". They may have specific authority in the capital structure of the production operation, with the status of an employer, or they may have specific duties in the organization's production operation, serving as employees responsible for safety production management. As professionals with specialized knowledge and specific obligations, the perpetrators of functional negligence are far more responsible for preventing harmful results than other general personnel. It is clear that convicting and sentencing them by general norms does not comply with the principle of the appropriateness of crime and responsibility. Therefore, they should be subject to stricter requirements in the law.

How should the penalty system for employer crimes be positioned to achieve the purpose of preventing and controlling labor crimes? Generally speaking, crimes committed by employers against workers are common in various fields. The subordinate status of workers determines that the difficulty for employers to commit crimes is very limited. In addition, workers who are victimized by their employers are often unable to seek effective ways to protect their rights because they want to keep their jobs. Such criminal acts not only cause great damage to the rights and interests of the workers, but also seriously break people's moral bottom line, affecting people's recognition of the legal system and undermining the seriousness of the law. Therefore, while expanding the scope of employer crimes, the penal regulation of crimes that seriously harms labor relations should be appropriate and severe. At the same time, in order to reflect the severity of punishment and the accuracy of conviction and sentencing, a sound penalty system that reasonably reflects the seriousness of employers' labor crimes should be constructed to face the criminal acts that violate the benefits of labor law (Jiang, 2010). Only in this way can we effectively prevent and control employer labor crimes, avoid social chaos caused by collective behavior, and vigorously promote the harmonious development of labor relations when labor relations are severely unequal.

3.3 Towards the regulation of collective action: decriminalization and lighter punishment

According to the data collected by the China Labor Bulletin on the map of mass incidents involving workers in China, there were 5,375 mass incidents involving workers between 2011 and 2015, of which 371 involved the arrest of workers. As the number of collective labor disputes and the number of arrests of workers in China continues to increase, how to characterize the behavior of the arrested workers is an issue worth studying¹.

Collective action, also known as industrial conflict or industrial dispute, refers to the unilateral

¹ Data from the China Workers' Incidents Map, provided by the China Labor Bulletin. Accessed at: <http://numble.com/PHP/clbmapc.html>

temporary cessation of work (business activities) or non-compliance with the collective rights and interests of labor and management parties in order to establish or change the status of labor relations, to realize their own rights or interests. Actions or measures are taken to exert pressure on the other side of the struggle (Chang, 2005). The initiator of the collective action can be either the employer or the worker; its form is a unilateral temporary suspension of work by the workers or a unilateral suspension of business activities by the employer; and its effect is the refusal to cooperate with the other party and to exert combat pressure on the other party. In reality, employer-initiated industrial action is not common, and when it does exist, it is usually carried out only on the opposite side of an industrial action against workers, or at the level of protecting the worker's rights and interests. Worker-initiated actions are more common and generally include strikes, picketing, factory occupations, leafleting, marches, and collective vacations. The most prominent problem and characteristic of collective action in China today is collective labor disputes, which determines that the government's legal basis for dealing with collective action by workers is mainly the "Emergency Response Law".

When administrative measures fail to produce the appropriate results, the state may use criminal means to suppress the incident on the grounds that it jeopardizes public security because of the number of people in the group, the suddenness of the incident, the intensity of the behavior, and the seriousness of the consequences. The reason for this is that China's criminal law and labor law lack effective norms for collective action, and there is a certain blank area in the legislation, that is, neither legal nor illegal. This evaluation of neither legality nor illegality cannot be used as a substantive criterion for judging the illegality of a crime when the crime is established. Labor-management conflict is a kind of common problem under the condition of a market economy, which is difficult to avoid in reality. If the labor-management conflict is properly handled, it will contribute to the harmonious development of labor relations and make labor relations one of the intrinsic driving forces to promote the development of enterprises and improve the corporate governance structure. On the contrary, it may have a negative impact on the enterprise's economic efficiency and social security order. Regarding labor-management conflicts, we cannot take a *laissez-faire* attitude towards the excessive expansion of behavioral boundaries, nor can we lower them by traditional means of force relief. Instead, we can only promote the dialogue between labor and capital through guidance, reconciliation and regulation, to control it within the permissible scope and degree of social order.

Then, when China's criminal law intervenes in labor relations, what crime and punishment model should be used to regulate collective actions? In the author's opinion, when criminal law intervenes in labor relations, it should adhere to the line of decriminalizing or lightening the punishment for collective actions of workers. Collective actions carried out by workers by legitimate means should not be considered crimes if they do not infringe upon greater legal interests. Only in this sense does criminal law not easily intervene or interfere with collective actions. In the case of collective action carried out by labor groups as a legitimate business practice, infringing upon a greater legal interest, it shall be convicted and punished as a crime for the violation of the legal interest, but the punishment shall be lighter, mitigated or exempted. Collective action, as a legitimate business practice of labor groups, is one of the most important aspects of workers' rights protection. The collective effort of workers to reach a collective contract with their employer in order to improve their economically disadvantaged position is itself a legitimate act of workers during the duration of the labor relations.

In view of the current sharp increase in the number of collective labor disputes in China, arrests of workers are common. As far as the current cases in China are concerned, once a collective labor dispute case enters the litigation process, it is regarded as a general criminal case and is classified as a crime of obstructing the order of social administration according to Chapter 9 of the Criminal Law. Regardless of whether one applies Japan's Labor Combination Law, the U.S. National Labor Relations Act, or even Taiwan's Act for Settlement of Labor-Management Disputes, most of the current collective labor disputes in China are illegal. The main reasons are as follows: first, the dispute behaviors caused by the dispute over rights are illegal; second, the subject is illegal, that is, the subject is not a trade union, and

the dispute behaviors do not have legitimacy; third, the means of the dispute behaviors exceed the legal boundaries, such as arson and burning of factories. However, the current situation is not unilaterally caused by laborers or enterprises. It is closely related to China's legislation, courts, enterprises, laborers, and especially the government. When disputes arise, should the government remain indifferent and neutral, or actively participate in mediation? Should the trade union remain as a peacemaker between labor and management, or represent only the workers? Should judges consider the special nature of labor relations when hearing cases? Should the legislation stipulate different procedures for different disputes? And many more. All of these questions should be clarified in order to determine whether the actions of laborers are legal or not, and whether the lawfulness of the actions of workers can be determined, which means whether he or she can obtain the exemption from criminal liability. In short, if a criminal exemption system is to be introduced, reform will be needed in many areas. As far as the current collective labor disputes in China are concerned, their particularity should be recognized, that is, criminal law should be used cautiously in the cases of collective labor disputes in China (without distinguishing between right disputes and interest disputes), and workers should not be easily convicted of a crime. When a worker's controversial conduct meets the elements of criminal law, it should be argued whether the conduct is justified.

4. Conclusion

In summary, the goal of intervening in labor relations through criminal law is to maintain harmonious and stable labor relations, as well as to reduce collective labor disputes. Firstly, it requires increasing the scope and intensity of criminal law's involvement in labor-management relations to achieve the ultimate criminal law protection of labor relations. Secondly, workers' legal collective actions should not be considered crimes. Finally, labor crimes committed by workers and those committed by employers should be differentiated from each other in terms of sentencing standards, so as to achieve a balanced labor-management relationship and social stability. It is precisely in the constant alternation between crimes and misdemeanors, light and heavy penalties, that the basic direction of criminal law's intervention in labor relations becomes clearer, and its future development trend is clarified. In the future, we should strive to promote the construction of China's legal system, so as to make labor relations present a legal system structure with multiple protection, and to promote the improvement of China's labor legal system in the new era.

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