

On whether auxiliary police officers belong to the crime of obstruction and the object of protection for the crime of assaulting police officers

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Abstract. The Amendment to the Criminal Law (XI) sets up a separate crime of assaulting police officers. The purpose of this amendment is to protect the interests of the people's police, establish law enforcement authority and maintain legal dignity. However, the lack of clarity in the subject of auxiliary police has caused certain difficulties for law enforcement. Regarding the status of the auxiliary police, from the legal relationship between the auxiliary police and the public security organs and the duties of the auxiliary police, the auxiliary police do not have the status of "people's police" and do not belong to the protection of the crime of assaulting a police officer. But it is the staff of state organs, so it belongs to the protection of the crime of obstruction of public service.

Keywords: Auxiliary police; People's police; Obstruction of official duties; Assault on police.

1. Introduction

Article 277 of China's Criminal Law provides that anyone who obstructs an employee of a state organ in the performance of his duties according to law by means of violence or threats shall be sentenced to fixed-term imprisonment of not more than three years, detention, control or a fine.¹ From this, it can be seen that there are two elements of the crime of obstructing official duties: first, it must be an employee of a state organ; second, it must be violent or threatening methods to obstruct him/her from carrying out his/her duties according to law. This article only discusses the first element, that is, must be an employee of the state organs, the other elements will not be expanded.

2. Auxiliary police officers belong to the protection of the crime of obstruction

The author believes that auxiliary police officers are employees of state organs. First of all, in the "Minutes of the National Symposium on Economic Crime Cases before the Courts" (hereinafter referred to as the "Minutes"), it is said that "according to the provisions of the relevant legislative interpretation, although not included in the staffing of state organs, but in the state, organs engaged in public service personnel, as the staff of state organs. Regardless of the identity of the person assigned, as long as the state organs, state-owned companies, enterprises, institutions, on behalf of the state organs, state-owned companies, enterprises, institutions in non-state enterprises, enterprises, social groups engaged in the organization, leadership, supervision, management and other work, can be identified as state organs, state-owned companies, enterprises, institutions assigned to non-state enterprises, enterprises, social groups personnel engaged in official duties."²

Therefore, to determine whether the auxiliary police belong to the staff of state organs, it is necessary to identify whether there is a commission relationship between the auxiliary police and the people's police. In the Summary, it is said that the so-called commission, that is, appointment, dispatch, which takes various forms, such as appointment, assignment, nomination, approval, etc. The "assignment" is the appointment and dispatch for the purpose of performing "specific official duties", and the official duties dispatched have specific functions, powers and responsibilities, and are official in nature, not affairs, and are representative of the state, and the relationship between the assignor and the assignee is subordinate. The relationship between the delegator and the delegate is subordinate, and there must be formal procedures and written formalities for the establishment of the delegation relationship. Therefore, the author believes that to judge whether there is a delegation relationship, that is, to judge whether there is a subordination relationship and whether there are formal procedures

and written formalities. In order to alleviate the contradiction between heavy police work and insufficient police personnel, it is common for public security organs around the world to employ police auxiliary personnel.³ There is no uniform standard for the employment and management of police auxiliary personnel in various places, based on which the State Council issued the Opinions on Regulating the Management of Police Auxiliary Personnel in Public Security Organs (hereinafter referred to as the Opinions on the Work of Police Auxiliary Personnel), which clearly states "Police auxiliary personnel is based on the development of social security situation and the actual needs of public security work, for social recruitment, for the daily operation of public security organs and police activities to provide auxiliary support for non-people's police identity personnel." ⁴ Auxiliary police provide auxiliary support so auxiliary police are playing the role of the right-hand man of the public security organs with certain affiliation. Public security organs in the recruitment of auxiliary police is open to the community, the recruitment of personnel need to go through registration, written tests, interviews, physical tests, medical examinations, political examinations and some other formal procedures, and finally accepted personnel signed a written contract with the public security organs, which shows that there is a subordinate relationship between the auxiliary police and the public security organs. Therefore, auxiliary police officers belong to the staff of state organs.

(1) We can also argue in a different way that from the source, under the current clear legal system in China, auxiliary police do not have the right to enforce the law. Their rights are granted by public security organs or other organizations under certain conditions, and not directly authorized by legislation, so there is an affiliation between auxiliary police and public security organs. Therefore, the law enforcement rights of auxiliary police originate from the commissioning relationship between auxiliary police and public security organs established through formal procedures and written contracts.

(2) In terms of content, the auxiliary police officers' exercise of power is actually delegated by the public security organs to exercise part of their rights and perform official duties within a specific scope of responsibility, which is exercised on behalf of the public security organs and has a certain degree of national representation.

(3) From the point of view of authority, the auxiliary police should be led by the public security organs in the performance of their duties, then that is to say, the auxiliary police should be protected by the public security organs in the performance of their duties as assigned by the public security organs. "Police auxiliary personnel to assist the people's police to perform their duties in accordance with the law is protected by law, and the consequences of the performance of duty behavior by the public security organs where." This is clearly expressed in the "Opinions on Regulating the Management of Police

Regulating the Management of Police Auxiliary Personnel of Public Security Organs".⁴

Thus, the auxiliary police and the public security organs see the existence of the relationship between the delegated and the delegated. Auxiliary police officers accept the assignment of state organs to represent the criminal authority of state organs and engage in official duties within specific terms of reference, so they can be recognized as personnel engaged in official duties in state organs, that is, they can be recognized as staff of state organs.

3. Auxiliary police officers do not belong to the protection of the crime of assault on police officers

Article 277 of China's Criminal Law provides that violent attacks on people's police officers who are carrying out their duties in accordance with the law shall be sentenced to fixed-term imprisonment of up to three years, detention or control. ⁵ There are two elements that constitute the crime of assaulting a police officer, one is the object of the assault is the people's police, and the second is the object of the of assault is the people's police in the execution of their duties.

3.1 Auxiliary police do not belong to the people's police

With the continuous promotion of China's comprehensive deepening public security reform and the increasing demand for police force in society, auxiliary police have become an important force in grassroots governance. Auxiliary police officers are involved in many areas of public security work at the grassroots level, assisting the people's police in law enforcement and making great contributions to the construction of the rule of law in China. ⁶So are auxiliary police officers the people's police or not? Different views have emerged in the academia. Some scholars believe that auxiliary police officers also face great danger to their lives in law enforcement activities, and the infringement they suffer in law enforcement activities should be protected, so they belong to the protection object of the crime of assaulting police officers. Some scholars, on the other hand, believe that auxiliary police officers do not have the identity of the people's police, so they do not belong to the protection of the crime of assault on police officers. The author believes that the auxiliary police is not the people's police, it does not have the identity of the people's police.

(1) According to the explicit provisions of the law: The Opinions on the Work of Police Auxiliary Personnel clearly state that police auxiliary personnel do not have the status of people's police. According to the recruitment system of the people's police, public security organs around the world can recruit and use police auxiliary personnel according to the labor law and other relevant legal provisions, which is essentially a contract appointment system and does not have the identity of the people's police. According to "on the standardization of the management of police auxiliary personnel of public security organs," Article 3: "The police auxiliary personnel referred to in these measures, refers to the recruitment and management by the public security organs to use, to perform the duties and labor contracts agreed upon in these measures do not have the identity of the people's police, mainly including civilian, auxiliary police two types of personnel engaged in police auxiliary work." ⁷It can be seen from the explicit provisions of the law, the auxiliary police do not belong to the people's police. Auxiliary police do not have the identity of the people's police, is a labor contract with the public security organs of the non-staff auxiliary police force, auxiliary police is through the recruitment of public security organs absorbed by the social force, which is essentially different from the people's police.

(2) According to the administrative assistant theory: On the other hand, the administrative assistant theory can actually better explain the identity of the auxiliary police. Administrative assistant is a private person under the command and supervision of the administrative organ, in order to achieve the administrative purpose, to assist in the implementation of administrative tasks, for the extension of the administrative organ hand and foot, is under the supervision and command of the administrative organ to play a role, exercise power, and does not have an independent legal status,⁸ its has the following characteristics: First, administrative assistant does not have an independent status, that is, does not have an independent subject qualification, its behavior also does not have independence, is subordinate to the administrative organ. It is clearly stated in the Opinions on the Work of Police Personnel that "police auxiliary personnel are non-people's police officers recruited according to the development of the social security situation and the actual needs of public security work and recruited for the society to provide auxiliary support for the daily operation of public security organs and police activities"⁹. Therefore, auxiliary police play such a role as a small assistant to the public security organs and are the police are subordinate to the public security organs and have a certain subordinate relationship. Secondly, administrative assistants cannot exercise power in their own name, but must be directed and delegated by the administrative organ to exercise power within a specific authority. An auxiliary police officer does not have the power to enforce the law; his power to enforce the law is granted by the public security organs or other organizations through formal procedures, and is delegated by the public security organs or other organizations to exercise power within a specific authority. Third, the consequences of the administrative assistant's exercise of authority will be the responsibility of the administrative organ. "Police auxiliaries assisting the people's police in the performance of their duties in accordance with the law are protected by law, and the consequences of the act of performing their duties are borne by the public security organ where they work." This is

clearly stated in the Opinions on the Work of Police Auxiliary Personnel. In summary, the auxiliary police is not the people's police, not as the crime of assault on police protection. Since there is no people's police status, the second constituent element is not relevant for further discussion from the perspective of constituent elements.

Therefore, the people's police are not the object of protection for the crime of assaulting police officers.

3.2 Consideration from the principle of crime and punishment

The basic principles of criminal law, refers to the criminal law itself, throughout the criminal law, must be generally followed by the overall, fundamental guidelines. And one of the most important principles is the principle of the law of crime and punishment. As a recognized principle of the rule of law in the world today, "the law of crimes and penalties" has been confirmed by the majority of national legislation, "no crime without express provision" and "no punishment without express provision". The principle of "nullum crimen sine lege" and "nulla poena sine lege" embodies the idea of democracy and respect for human rights. The principle of the law of crimes and penalties requires that crimes and penalties must be expressly provided for by law in advance, and must enable the nationals to predict in advance the nature and consequences of their actions. The "written legal provisions" also repeatedly emphasize that the law that stipulates the crime and its consequences must be a written law, only the law enacted by the legislature and not the executive, and that judges can only convict and sentence according to the written law, and are not allowed to make assumptions. 9From this point of view, the criminal law does not specify the penalties for violent attacks on auxiliary police officers in the performance of their duties, but only the penalties for violent attacks on people's police officers in the performance of their duties, if the auxiliary police officers as the protection of the crime of assault on police officers is obviously contrary to the principle of statutory crime and punishment. If contrary to the principle of statutory crime and punishment, it will reduce the freedom rights of citizens to a certain extent, and will not play a role in the protection of citizens. Because if contrary to the principle of statutory crime and punishment, the judge may produce arbitrary behavior, such as the assault of Zhang San positioned police assault, but the assault of Li Si police positioned intentional injury, this behavior directly leads to the loss of "certainty" of punishment, not to play a protective role of the whole society, so that citizens are not protected by human rights. In summary, I believe that the auxiliary police cannot be used as the protection of the crime of assault on police.

4. The inclusion of auxiliary police officers as objects of protection for the crime of assaulting police officers is an analogous interpretation

In the author's opinion, the inclusion of auxiliary police officers as the object of protection for the crime of assaulting police officers belongs to analogical interpretation, which seriously violates the principle of interpretation of criminal law. 9Analogical interpretation and expanded interpretation is relative, expanded interpretation is the expansion of the usual meaning of the term, can not exceed the possible meaning of the term; otherwise, belong to analogical interpretation. For example, Article 258 of the Criminal Law provides for the crime of bigamy, "Anyone who has a spouse and commits bigamy, or marries another person knowing that he or she has a spouse, shall be sentenced to fixed-term imprisonment of not more than two years or to detention." If "marriage" here is interpreted to include cohabitation or adultery, it goes beyond the possible meaning of the word marriage, which is an analogous interpretation. The analogical interpretation not only seriously violates the content of the principle of statutory crime and punishment, but also may lead to the abuse of judicial power of judges, so that people who should not be criminally punished pay a painful price, or people who should be criminally punished get more serious criminal punishment, contrary to the fairness and justice of justice.

To determine whether it is an expanded interpretation, we must first look at whether it exceeds the approximate meaning of the terms of the criminal law provisions in the first place, and if it is outside its range, it does not constitute an expanded interpretation.

(1) whether to exceed the meaning of the term: on the one hand, the crime of assaulting police officers must be the object of the people's police, the auxiliary police officers are interpreted as the prerequisite for the protection of the crime of assaulting police officers is to interpret the auxiliary police officers as the people's police, beyond the normal meaning of the term. The People's Police Law of the People's Republic of China, Chapter 1, Article 2, paragraph 2, provides that "the people's police include public security organs, prison management organs of the people's police and the people's courts, the people's procuratorate judicial police." The interpretation of the auxiliary police as the people's police is obviously beyond the normal meaning of the criminal law provisions, and does not constitute an expanded interpretation but an analogous interpretation.

(2) Whether it is beyond the possibility of prediction: It is further necessary to judge whether it is beyond the predictable possibility of the nation. The legislature expresses its intention through words, and therefore, when interpreting, it can only be interpreted within the meaning that its words may have. Since criminal law itself has an overall meaning, it should be interpreted in an expanded manner without going beyond its overall meaning. Since the nation understands what is a crime, what is a criminal act, and what should be prohibited through the words made by the legislature, an interpretation within the possible meanings of criminal law terms will not exceed the predictability of the nation, i.e., an expanded interpretation will not exceed the predictability of the nation. If the interpretation is by analogy, the national predictability will be exceeded, and the criminal law provisions will lose their meaning of existence. In the crime of assault, the criminal law provisions of the people's police does not include auxiliary police, so the auxiliary police as the protection of the crime of assault exceeds the national predictability, the so-called national predictability, the author understands that the national behavior of their own predictability, that is, their future behavior will have certain expectations of the legal consequences, so that citizens know what range of their behavior is legal, beyond what range will be sanctioned by law. The crime of assaulting a police officer is only mentioned in the law. The crime of assaulting a police officer only mentions the "people's police", that is, the legal provisions only mention that the object of protection of the crime of assaulting a police officer is the people's police officer, and not the auxiliary police officer. If the auxiliary police is interpreted as the people's police, this greatly exceeds the predictability of the nation, so it is an analogous interpretation, a serious violation of the basic principles of criminal law.

4.1 The inclusion of auxiliary police officers as objects of protection for the crime of assaulting police officers does not necessarily provide better protection for auxiliary police officers.

According to the scholarly opinion, one of the most important objectives of the scholars who support the inclusion of auxiliary police officers as the objects of protection for the crime of assault is to protect the interests of auxiliary police officers, to protect their law enforcement rights, and to give the greatest punishment to the criminals when they are the objects of assault, but is punishment the most beneficial method for protecting the parties and restoring social relations? From the perspective of the auxiliary police and the whole family behind them, is it really possible to give more severe sanctions to the criminals to make them better protected? If an auxiliary police officer is injured in the course of his duties, is it really in the interest of restoring injured social relationships by increasing the punishment of the criminal? Is it really in the best interest of the auxiliary police officer and his family to give the criminal a more severe sentence? The author believes the answer is no. There are many ways to protect auxiliary police officers, not just by giving criminals punishment, for example, but also by way of civil compensation to make up for the fault of criminals against auxiliary police officers. From the perspective of restorative justice, civil compensation is also a means of restoring order that has been disrupted by criminal behavior. If the defendant's civil compensation is positive, it will enable the victim to receive civil compensation in a timely manner, and to a certain extent, restore or re-establish the damaged social order. 15If a police officer is aggrieved in the course

of his duties; the defendant can actively take civil compensation behavior is also a better way to compensate the victim and his family in a relatively good way. Of course, some scholars may ask why civil compensation and criminal punishment cannot be used together. In my opinion, it is a kind of "abuse" of criminal means to use both of them. The abuse of criminal means is a waste of our judicial resources, and may also cause incalculable damage to the parties. If the auxiliary police officers are included as the object of protection for the crime of assaulting police officers, when the auxiliary police officers are violated, they are also only given harsher punishment for criminals, and there is no substantial compensation for the police officers themselves, for example, instead, will it lead to their non-fulfillment of civil compensation due to the harsher punishment of criminals, or the difficulty of fulfilling civil compensation due to the sentence? (Search some papers in this regard and expand on it)

So, including auxiliary police officers as the object of protection for the crime of assaulting a police officer does not necessarily provide better protection for auxiliary police officers.

4.2 Consideration from the perspective of deterrence of penalties

The author believes that the inclusion of auxiliary police officers as a protected object of the crime of assault on police officers will not necessarily reduce the probability of this type of crime. Penalties for the following categories of people is not deterrent: 1. legally illiterate criminal personnel. Criminal law is deterrent because people know that such behavior is prohibited by law and that the consequences of violating the law are unwanted penalties. However, for potential offenders such as legally illiterate persons, they may not know that their behavior will constitute a crime, and are fearless because of their ignorance, thus making the penalties have little deterrent effect on such offenders. 2. Passionate offenders and convicted offenders. Offenders often exhibit weakened or lost reason, narrowed perceptions, and greatly limited ability to think about problems, as well as diminished self-control. Crimes committed under such circumstances usually appear as unpremeditated crimes. The offender does not determine the motive and target of the crime in advance, but only commits the crime because of a momentary loss of reason. It is difficult to deter this type of offender from committing a crime without any consideration of the consequences. Conviction offenders do not believe that their criminal behavior is wrong. They are convinced that the people around them, society, government orders, and laws are wrong, so they ignore legal orders, and it is impossible to deter such criminals through criminal law. 3. Professional criminals. For professional criminals, they commit crimes because they are confident in their skills and methods, and they are sure that their crimes will not be discovered or even if they are discovered, they will not be arrested, so that the penalties will not be deterrent for such people. 4. People who have difficulty in making ends meet commit crimes. For people who have difficulty making ends meet. The threat of death comes more directly from the lack of livelihood, and not committing a crime will lead to their own death, but committing a crime will have the hope of life, in this case, the offender will usually choose to commit the crime.

We searched all the cases of assaulting police officers with the keywords of "assaulting police officers" and "people's police officers" and found that most of the perpetrators committed the crime out of passion and ignorance of the law, that is, they committed the crime without premeditation. When they committed the crime, they did so because of their own momentary emotional excitement, lost their own reason, did not control their emotions, and did not consider too many factors. For example, in "(2021) 豫 13 刑终 1115 号", "Yu Mou and others were about to conduct a mandatory summons to Zhang Cheng, in the process of handcuffing Zhang Cheng, Zhang Cheng suddenly became emotional, grabbed the handcuffs and held the handcuffs to Yu Mou head, back, body beatings, and kicked Yu Mou. " This is a typical crime of passion.

They do not know that the auxiliary police officer who is enforcing the law is still a civilian police officer, and they do not know that they are violating the personal rights of the auxiliary police officer, and they do not know that their behavior is prohibited by law, and they do not know that their behavior

will violate the law. Therefore, the inclusion of auxiliary police officers as protected objects of the crime of assaulting police officers will not reduce the harm to auxiliary police officers.

In summary, from several other aspects (to expand), auxiliary police officers do not belong to the protection of the crime of assault on police officers.

5. Conclusion

The Criminal Law Amendment (XI) has added the crime of assaulting police officers, but there are different views on whether this crime is applicable to auxiliary police officers in both criminal law theory and judicial practice. Therefore, based on the previous research, the author further researched whether and to what extent the crime is applicable to auxiliary police officers. This article is divided into two major parts to discuss this issue. First, the author believes that the auxiliary police belong to the protection of the crime of obstruction of official duties. Because the auxiliary police belong to the staff of state organs and auxiliary police in the execution of their duties in accordance with the law. Secondly, auxiliary police officers do not belong to the protection of the crime of assault on police officers. This conclusion is mainly from the following aspects: First. Auxiliary police officers do not belong to the people's police II. The interpretation of the auxiliary police as the people's police violates the principle of crime and punishment. The interpretation of the auxiliary police as the people's police belongs to the analogous interpretation IV. Auxiliary police officers are not necessarily better protected by the crime of assault on police officers. The interpretation of the auxiliary police as the object of protection of the crime of assault on police.

officers will not necessarily increase their penal deterrent effect. Due to the limited space, I did not study the "violent assault on police" clause, and hope to have the opportunity to do more in-depth research on this clause in the future. Whether through theoretical analysis or practical summary, the results of the predecessors on obstruction and violent assault on police provisions have provided a great deal of data for the author's understanding of the crime as well as research.

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