Academic Journal of Management and Social Sciences
ISSN: 2958-4396 | Vol. 15, No. 2, 2026

Research on the Sentencing Standards for Corruption and Bribery Crimes in China

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Abstract: With the in-depth advancement of China's anti-corruption campaign and the continuous improvement of the rule of law, the issue of sentencing standards for the crimes of embezzlement and bribery has increasingly become a focus of attention in criminal law theory and judicial practice. This article takes the bribery case of Lai Xiaomin as the entry point, systematically sorts out the evolution process of the sentencing standards for the crime of embezzlement and bribery in China from the "specific amount" model to the "amount + circumstances" model, analyzes the application logic and practical predicament of this model in judicial practice, and combines foreign legislative experience to put forward suggestions for further improving the sentencing standards for the crime of embezzlement and bribery in China. Research shows that the "amount + circumstances" model has progressive significance in achieving individual case justice, but there are still problems such as ambiguous circumstances determination and difficulty in ensuring balanced sentencing, which urgently need to be improved through measures such as refining circumstances determination, establishing a quantitative assessment system, and strengthening judgment reasoning.

Keywords: Crime of Embezzlement and Bribery Sentencing Standards; The Lai Xiaomin Case Amount + Circumstances; Application of The Death Penalty.

1. Introduction

Embezzlement and bribery crimes, as typical representatives of corruption, seriously erode the foundation of national governance and social fairness and justice. China has always attached great importance to anti-corruption work, and the regulation of the crime of embezzlement and bribery in the Criminal Law has also undergone many adjustments and improvements. The Criminal Law Amendment (IX) of 2015 made significant revisions to the sentencing standards for the crimes of embezzlement and bribery. It abandoned the previous model of conviction and sentencing based solely on the amount and instead adopted a dual flexible standard of "amount + circumstances"[1]. Subsequently, in 2016, the Supreme People's Court and the Supreme People's Procuratorate issued judicial interpretations, further clarifying the specific criteria for determining "a relatively large amount", "a huge amount", "an especially huge amount", as well as "relatively serious circumstances", "serious circumstances" and "especially serious circumstances"[2].

However, in judicial practice, especially in cases of "super corruption" involving particularly huge amounts of money and extremely serious circumstances, how to precisely apply the "amount + circumstances" standard to achieve a balance between crime, responsibility and punishment remains a complex and thorny problem. The Lai Xiaomin case, as a typical case with the highest amount of bribery and extremely heinous circumstances since the founding of the People's Republic of China, its death sentence has drawn widespread attention from all sectors of society and in-depth thinking from the legal community. This case is not only an extreme test of the "amount + circumstances" sentencing model, but also provides a highly valuable sample for studying the application logic and improvement path of the sentencing standards for the crimes of embezzlement and bribery in China.

2. Legislative Evolution and Normative Connotations of Sentencing Standards for Corruption and Bribery Crimes in China

2.1. Historical Changes in Sentencing Standards

The sentencing standards for the crimes of embezzlement and bribery in China have undergone an evolution process from "counting the ill-gotten gains and determining the crime" to "focusing on the amount", and then to "giving equal weight to the amount and circumstances". In 1997, the Criminal Law adopted specific amount standards, dividing the crimes of embezzlement and bribery into four sentencing tiers. Although it was convenient to operate, it was prone to lead to the drawback of "judging only by amount". In 2015, the Criminal Law Amendment (IX) made significant adjustments to this, abolishing the specific amount provisions and replacing them with a flexible model of "amount + circumstances", aiming to more comprehensively and scientifically reflect the social harmfulness of criminal acts[1]. In 2016, the judicial interpretations of the Supreme People's Court and the Supreme People's Procuratorate further raised the threshold for sentencing to 30,000 yuan, clarified the standards for "a huge amount" and "an especially huge amount", and emphasized the independent role of circumstances in conviction and sentencing [1].

2.2. Normative Interpretation of the Current "Amount + Circumstances" Standard

Article 383 of the current Criminal Law and related judicial interpretations have established a dual sentencing mechanism based on "amount" and adjusted by "circumstances"[1,2]. Among them, "amount" is divided into three tiers: "relatively large", "huge" and "extremely huge". The "circumstances" are

classified into three categories: "relatively serious", "severe" and "extremely serious", specifically manifested as soliciting bribes, accepting bribes repeatedly, seeking improper benefits for others, and causing significant losses, etc. This model is theoretically more in line with the principle of proportionality between crime and punishment, but in practice, it still faces problems such as strong subjectivity in the determination of circumstances and the lack of a unified standard for weight measurement.

3. Basic Facts and Sentencing Focus of Lai Xiaomin's Case

3.1. Summary of Case Facts

Lai Xiaomin, the former chairman of China Huarong Asset Management Co., LTD., from 2008 to 2018, took advantage of his position to seek benefits for others and illegally accepted property worth a total of over 1.788 billion yuan. His criminal acts are characterized by long-term, repeated and gang nature, and involve serious circumstances such as soliciting bribes, seeking improper benefits for others and causing significant losses to state-owned assets. In January 2021, the Second Intermediate People's Court of Tianjin Municipality sentenced Lai Xiaomin to death in the first instance, deprived him of his political rights for life, and confiscated all his personal property. On January 29 of the same year, Lai Xiaomin was executed[3].

3.2. Core Points of Contention in Sentencing

The sentencing focus of Lai Xiaomin's case mainly lies in three aspects:

(1) The extremity of the amount of the crime: The bribe amount of 1.788 billion yuan far exceeds the standard of "particularly huge amount", which is extremely rare in judicial practice.

(2) The complexity of "particularly serious circumstances" : The court determined that it has multiple circumstances such as "soliciting bribes, seeking improper benefits for others, violating duties and authorities, accepting bribes repeatedly over a long period of time, and causing significant losses", which together constitute "other particularly serious circumstances"[3].

(3) The basis for the application of immediate execution of the death penalty: Against the backdrop of the cautious use of the death penalty for economic crimes in recent years, why to apply immediate execution of the death penalty instead of suspended death penalty to Lai Xiaomin has become a focus of social concern.

4. In-depth Analysis of Sentencing Factors in the Lai Xiaomin Case

4.1. Positioning and Function of the Amount of Crime

In the Lai Xiaomin case, the amount of 1.788 billion yuan in bribes is not only a fundamental factor for sentencing but also a key indicator reflecting the social harm of his actions. Compared with cases such as Bai Enpei (accepting bribes of 246 million yuan) and Wei Pengyuan (accepting bribes of 210 million yuan), the amount of bribes accepted by Lai Xiaomin has risen by several orders of magnitude, significantly breaking through the "amount ceiling" in judicial practice. Although the amount is no longer the sole criterion after the Amendment (IX) to the Criminal [1], in extreme cases, the amount still holds a strong symbolic significance and a guiding role in sentencing.

4.2. Cluster Effect and Comprehensive Evaluation of "Particularly Serious Circumstances"

In the case of Lai Xiaomin, the court particularly emphasized the severity of his circumstances such as "soliciting bribes", "seeking improper benefits for others", and "causing significant losses". These plots do not exist in isolation but are superimposed and interact with each other, forming a "plot cluster", which greatly enhances the accountability and social harm of the behavior[3]. Especially, its abuse of financial power has led to huge losses of state-owned assets and the accumulation of financial risks, further strengthening the judicial determination that the crime is "extremely serious".

4.3. The Reasoning Logic and Standards for The Application of The Death Penalty

The death sentence in Lai Xiaomin's case reflects China's strict standards and cautious attitude towards the application of the death penalty for the crimes of embezzlement and bribery. The court clearly pointed out in its judgment that the "amount of bribery was particularly huge, the criminal circumstances were particularly serious, the social impact was particularly bad, and it caused particularly significant losses to the interests of the state and the people", which met the "conditions for the application of the death penalty" stipulated in Article 383 of the Criminal Law[1,3]. In addition, circumstances such as "no sign of repentance" and "refusal to cooperate with the investigation" are also comprehensively taken into account in the sentencing. This case indicates that, in the context of retaining the death penalty, the application of the death penalty for the crime of embezzlement and bribery is still based on a comprehensive judgment of "amount + circumstances + consequences + attitude".

5. The Dilemma and Reflection on Sentencing Standards Reflected in the Lai Xiaomin Case

5.1. The Practical Effectiveness of the "Amount + Circumstances" Model

The application of the "amount + circumstances" model in the Lai Xiaomin case reflects the legislators' original intention of attempting to achieve individual case justice through flexible standards. This model breaks through the rigid drawbacks of the "amount-based" approach, enabling judges to comprehensively consider multiple factors such as the perpetrator's subjective malignancy, behavioral patterns, and social influence when sentencing, making it more scientific and flexible.

5.2. Challenges and Predicaments Faced by The Current Standards

Although the "amount + circumstances" model is progressive, there are still several problems in its application in practice:

(1) Ambiguous criteria for determining circumstances: What is "particularly serious circumstances"? Although the judicial interpretation has listed several situations, it lacks specific operational guidelines, resulting in an excessive

space for judicial discretion[2].

(2) Lack of a mechanism for weighing the weight of circumstances: When multiple circumstances coexist, there is a lack of clear hierarchical and quantitative references on how to assess the impact of each circumstance on sentencing.

(3) Flexible circumstances such as "social impact" are difficult to objectize: Expressions like "particularly bad social impact" are highly subjective and easily influenced by factors such as public opinion and policies, which affects the stability and predictability of sentencing.

(4) It is difficult to ensure balanced sentencing: In extreme cases where the "amount ceiling" has been broken through, how to avoid "cliff-like" differences in sentencing and achieve balanced sentencing for similar cases remains a difficult problem in judicial practice.

6. Suggestions for Improving the Sentencing Standards for Corruption and Bribery Crimes in China

6.1. Refine the Criteria for Determining Circumstances

It is suggested that the Supreme People's Court issue typical cases or sentencing guidelines to further clarify the specific manifestations of "particularly serious circumstances" and their weight in sentencing. For instance, for circumstances such as "causing significant losses" and "having a bad social impact", stratified determination can be made by combining indicators such as the amount of economic losses, the scope of influence, and public opinion response.

6.2. Establish a Hierarchical and Quantitative Assessment Reference System for Sentencing Circumstances

We can draw on the sentencing guidelines and systems of countries such as Germany and the United States to explore the establishment of a quantitative scoring system for sentencing circumstances of the crimes of embezzlement and bribery. By setting basic scores for different circumstances and adjusting them in combination with the amount range, a relatively unified sentencing reference framework is formed, enhancing the transparency and operability of the judiciary.

6.3. Strengthen the Sufficient Reasoning of The Sentencing Reasons in The Judgment

The judgment should detail the basis for determining each sentencing circumstance, the weighing process and its impact on the penalty, so as to enhance the openness and persuasiveness of sentencing. This is not only a manifestation of judicial justice, but also helps to unify the standards of judgment and enhance the credibility of the judiciary.

6.4. Set Separate Sentencing Standards for The Crime of Embezzlement and the Crime of Accepting Bribes

Given the differences between the crime of embezzlement and the crime of accepting bribes in terms of criminal objects, behavioral patterns, and social harmfulness, it is suggested that different sentencing standards be set for the two crimes when the law is revised in the future. The crime of embezzlement can continue to adhere to the principle of "amount as the main factor and circumstances as the secondary factor", while the crime of accepting bribes should place more emphasis on "situation-centeredness", highlighting its infringement upon the integrity of public power.

7. Conclusion

The Lai Xiaomin case, as a landmark case in China's fight against corruption, not only demonstrates the country's firm determination to combat corruption, but also exposes the complexity and limitations of the sentencing standards for the crimes of embezzlement and bribery in practice. The "amount + circumstances" model represents a significant advancement in sentencing standards in theory, but its successful implementation depends on the refinement of circumstances determination, the scientific weighing of sentencing, and the sufficiency of judicial reasoning. In the future, China should, on the basis of its own judicial practice, reasonably draw on foreign sentencing experience, and gradually build a more fair, transparent and efficient sentencing system for the crimes of embezzlement and bribery through a combination of legislative improvement and judicial guidance, providing a solid legal guarantee for achieving the anti-corruption strategic goal of "not The Supreme People's Court and the Supreme People's Procuratorate.

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