

The End of the Theory of Expectation Possibility in Criminal Law

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Abstract: The expectation possibility theory of criminal law is one of the important theories in the field of criminal responsibility, which focuses on whether the perpetrator has the possibility of avoiding the illegal act when committing the crime. This paper attempts to find the fate of the theory in China's criminal law through the discussion of the historical development of the theory of expected possibility, its relationship with China's criminal liability, its introduction analysis, and the analysis of the reasons for exemption from liability beyond the law.

Keywords: criminal law, expectation of possibility, exemption from liability beyond the statute Judicial impartiality

1. Introduction

The judgment of the Reich Court of Germany in the "Mahler's Reins" case of 1897 provided the theoretical basis for the system of anticipation of possibility. The reason was that cannot expect the defendant to risk losing his job by refusing to drive the horse to the employer, so the defendant should not be held liable for negligence. [1] This case provoked German thinking and formed the theory of expected probability, that is, whether the perpetrator could choose to act legally when committing the crime. If you can't choose, you won't be responsible. Responsibility is based on the actor's lawful ability to choose and should, and if there is no other choice, it cannot be condemned. [2]

There are two connotations of expecting possibility: first, humanitarian and humanistic care, criminal law should be applied cautiously, and human rights protection is the highest goal; From the above theory, it is consistent with the spirit of the implication that the perpetrator cannot be expected to perform other lawful acts in the expectation possibility, so the perpetrator does not have criminal responsibility. [3]

2. The relationship between expectation possibility and criminal liability

The essence of criminal responsibility is actually the exploration of the basis or reason for its existence, while the criminal responsibility of responsibility is discussed in the "three tiers" of the civil law system. In the theory of the establishment of the three levels, the three stages of constitutive elements, illegality and responsibility are studied separately, and criminal responsibility in the sense of responsibility is essentially an independent element of the establishment of a crime that cannot be examined in the two stages of constitutive elements and illegality, which is usually called the

responsibility factor. It is generally believed that the function of expecting possibility is to prevent and reduce the cause of responsibility, and whether there is expectation of possibility means whether there is guilt, and guilt is not only the basis of criminal responsibility but also the core of the crime, so the lack of expectation possibility is naturally not responsible or can reduce criminal responsibility. [4] The relationship between the two is like the feeling of checks and balances, but there are also theories in Chinese legal system that play the same role, that is, the cause of liability deterrence, and most scholars in Germany oppose the expectation of possibility as an act that exceeds the law, and regard it as a general exemption in law. Most Japanese scholars recognize the possibility of expectation as a constituent element of supra-regulation, but they are cautious about it.

3. Expect the embodiment of possibilities

3.1. Provisions of Chinese Criminal Law on the expectation of possibility

Criminal intent: When judging criminal intent, the judicial authority will assess whether the perpetrator has the mental state of mind to commit the crime knowingly at the time of committing the criminal act. "Knowingly" here is an expression of anticipation of possibility.

Criminal negligence: When judging criminal negligence, the judicial authority will assess whether the perpetrator has a state of mind that should be known but not known when performing the duty of care. The phrase "should know but not know" here can also be understood as the embodiment of expecting possibilities.

Capacity for criminal responsibility: Perpetrators with mental illness or intellectual disability may be exempted or mitigated from criminal responsibility if they are unable to recognize that their actions are illegal or unable to control their actions at the time of committing the crime. The criterion here is related to the theory of expected possibility. [5]

Criminal suspect's attitude of remorse and expression of remorse: At the same time, when sentencing, the criminal suspect's admission of guilt and repentance should be fully considered, so as to evaluate the possibility of his own illegal conduct. The criminal suspect pleaded guilty and repented, compensated for the loss, and obtained the victim's forgiveness, which, in a sense, is a manifestation of the expectation of possibility at the time of the crime.

The criminal suspect's motive and purpose of the crime: When judging the criminal suspect's criminal motive and purpose, it can also reflect the expected possibility of the criminal suspect at the time of the crime. For example, if a criminal suspect has a clear motive and purpose for committing the crime, then he or she is more likely to commit the crime.

3.2. The position of the theory of expected possibility in China's criminal law system

In China's criminal law system, the position of expectation possibility theory is not significant. Traditional criminal law focuses on the four elements of crime, namely, the object of the crime, the objective aspect of the crime, the subject of the crime, and the subjective aspect of the crime. This system has not yet considered the causes of unlawful deterrence and liability deterrence separately, as in civil law systems, in order to emphasize the dynamic criminalization mechanism of human rights protection. In this flat system, expecting the possibility of being an excuse has little place. In order to integrate into the system, it is necessary to dismantle and integrate the four elements of crime, and mix the objective and subjective aspects of the crime, which is similar to the constituent elements of the German and Japanese criminal law classes. At the same time, the age of responsibility and the ability to bear responsibility among the criminal subjects and the intentional and negligent aspects of the crime are evaluated using the subjective aspects of the crime as a bridge. Through the evaluation of criminal conduct, the conviction can be examined at all stages of the commission of the offence

and the question of the likelihood of expectation and gravity can be placed at the level of criminal responsibility. [6]

In the hierarchical criminal system, the discussion includes two levels: the elements of violation and the elements of responsibility. [7] The offender is involved in the cause of illegal obstruction, and the responsible class is involved in the cause of obstruction. Mental facts (e.g., intention, negligence, purpose, motive) are the elements of positive responsibility, while the causes of responsibility deterrence include the capacity for responsibility, the possibility of knowing the illegality, and the possibility of expectation. [8]

It is not difficult to see that in the two criminal systems, many scholars have explored the position of expectation possibility in each system, but whether these theories can really be incorporated into China's criminal law system remains to be discussed, in the traditional four-element system through the bridge into the system, the method is feasible, and it can be explained, but it is inevitably too complicated, and it is not easy to separate a part of the elements from itself for integration, first of all, whether there will be problems in the stripping analysis, and it will also be affected in the judgment of the entire crime composition, and it is difficult to apply.

The unique structure of the four-element criminological system determines that the criminological field of the system cannot accommodate the expected possibility theory, and the content belonging to the category of "expected possibility theory" already exists in the fields of personal danger theory, social danger theory, punishment theory, etc., and ignoring or ignoring this part of the content and rigidly inserting the expected possibility theory will inevitably cause unnecessary repetition and conflict. [9]

4. Introducing and analyzing the theory of expectation possibility

There are two voices in the academic field for or against the introduction of expectation possibility, and those who advocate this theory believe that the theory of expectation possibility complements China's current criminal law policy and helps to achieve the goal of a harmonious socialist society. Although the policy of blending leniency and severity emphasizes "lightness" and "severity", it is fundamentally based on emphasizing "lightness" and seeking the unity of love and law. [10]

The introduction of the theory of expected possibility should help to solve the contradiction between criminal law and reality, and can explain the existence and magnitude of the perpetrator's responsibility with the help of the scientific principle of expected possibility theory, so that some special provisions on criminal responsibility in China's criminal law can be reasonably explained. Some of China's criminal judicial interpretations also embody the spirit of expecting possibilities. However, in Chinese current criminal law, the theory of expected possibility has not been clearly defined. As a result, the possibility of expectation is often ignored in the actual judicial process, which may affect the fair determination of criminal responsibility. In order to better achieve judicial fairness, China should introduce the theory of expected possibility into the criminal law, and give due consideration to it when convicting and sentencing. [11]

Incorporating the possibility of expectation into the conviction and sentencing process can help improve the fairness and effectiveness of the judiciary. First of all, the consideration of the expectation of possibility can make the judgment of criminal responsibility more comprehensive and objective, which is conducive to revealing the true malice of the perpetrator. Secondly, by considering the possibility of expectation, can ensure that the judgment of criminal responsibility is more in line with the concept of social fairness and justice, and improve the public's recognition and acceptance of the verdict. [12]

In short, it is of great significance to introduce the theory of expected possibility into China's current criminal law and give it due consideration in conviction and sentencing, so as to promote judicial fairness and improve public recognition. It is expected that the application of the possibility

theory will make the judgment of criminal responsibility more scientific and reasonable, which is conducive to the construction of a fair and efficient judicial system. On this basis, China's criminal law system will continue to improve and provide more effective legal guarantees for the people. [13]

Opponents argue that expectation of possibility is a controversial doctrine in civil law criminal legislation. In countries such as Germany and Japan, this doctrine has been ignored and used cautiously because of the risk of abuse of judicial power. There is a big difference between the criminal law scholars in China and the crime composition in China's criminal law, and there is also a risk of expansion of judicial power. Legal profession should be cautious about the violation of human rights and the impact on justice caused by the expansion of judicial power. [14]

Criminal law expects the possibility of exercising the discretion of the judge on a case-by-case basis. Because each case has its own different characteristics, and each judge has different considerations, they will not judge the case according to exactly the same criteria, so there is a great deal of uncertainty in this process. Differences in judgment results caused by these random factors will lead to the fairness and seriousness of the law being undermined.

The author believes that the introduction of the theory of expected possibility has a positive role in promoting the improvement of criminal law legislation and justice in China, and is conducive to improving the rationality and fairness of the application of law. On this basis, China should actively explore and practice the application of the theory of expected possibility in legislation and justice, in order to contribute to the improvement and development of China's criminal legal system.

5. Possibility of expectation and exemption from liability beyond the law

There is a great deal of controversy as to whether the possibility of expectation can be used as a reason for exemption from liability beyond the regulations. There are two main theories: one is the negative theory, which holds that "personality responsibility" is difficult to legalize and standardize, which is contrary to the clarity of the law, and that "there is a risk of losing control by taking the expected possibility based on social morality as the yardstick of crime. [15] The theory of expectation possibility are uncertainties and potential risks in the application of this theory at this stage, which may lead to abuse of judicial power and disorder. Caution should be exercised about its application until the criteria and boundaries are clarified. [16]

Some scholars affirm that although the doctrine of expectation of possibility is declining in Germany, Japan's "super-legal" cause of deterrence is recognized by the legislation of various countries because the German criminal legislation has clearly defined various reasons for exemption, so there is no need to identify the impossibility of expectation as a "super-statutory" cause of liability. [17]; In the Japanese criminal law, there are not many provisions on the cause of liability deterrence, so it is necessary to treat the expectation of impossibility as a cause of liability deterrent beyond the law.

In the author's opinion, the expectation of possibility cannot be used as a non-regulatory exemption reason, and in fact, the main reason why Germany does not use it as a non-regulatory cause is the ambiguity of the concept of expectation possibility. However, admitting the existence of a vague boundary and no expectation possibility as a cause for supra-legal obstruction of responsibility conflicts with legislation and is inconsistent with the concept of refinement of criminal law, and will seriously disintegrate the stability of criminal law norms. It should be noted that the basis for the development of dogmatics is the provision of positive law, and the purpose of the development of dogmatics is to optimize the application of positive law. [18] The expectation possibility represents the level of freedom of the offender's will, and the factors that affect this expectation possibility are actually the reasons that lead the offender to have a certain subjective will. The situation is diverse, and therefore it is not possible to stipulate all the elements in the criminal law, but it must be comprehensively analyzed and determined by the judge, which not only increases the burden of trial

evaluation, but also risks giving the opportunity for judicial dictatorship to take advantage of it, thereby endangering judicial fairness.

6. Conclusions

Looking at the research of the academic community, Discuss the findings that the debate on the question of expected possibility in Chinese criminal law theory Many, whether to introduce the possibility of expectation, whether the possibility of expectation can be integrated into China's criminal law system, the relationship between the possibility of expectation and criminal responsibility, whether the possibility of expectation can be used as a reason for exemption from liability beyond the law, etc. but should make it clear that the real meaning of criminal law lies in practice, and what discussing or the doctrine of criminal law should serve the substantive world of criminal law, so everyone don't need to discuss whether this theory is in line with the system, whether it can be integrated into the system, the theoretical spirit behind it is beneficial to the development of law, legal profession should learn and apply.

The vagueness of the concept of expectation possibility itself is not a problem of the system, but comes from the concept itself, in the unclear judgment criteria, the conflict between subjective will and objective conditions, the differences between cases, and the consistency of the application of law. All of them are ambiguous, so they are destined not to be used as a statutory reason for exempting responsibility, but can think about whether the legal meaning behind this theory can be integrated into Chinese original provisions, and the judgment of "guilty" and "guilty" in China's current criminal law cannot simply invoke the "expectation of possibility", and only be considered in sentencing. The possibility of expectation and social harmfulness are both substantive constraints in criminal law, and their existence and severity are directly related to the severity of conviction and punishment.

On the issue of crime and non-crime, China's criminal law adheres to the realization of a complete and strict rule of law. This means that only when the perpetrator's conduct meets the subjective and objective elements stipulated in the criminal law can it be recognized as a crime. On the issue of minor crimes, the legislation stipulates a relatively large sentencing range, which is left to the discretion of the judiciary according to the specific circumstances. At this stage, social harmfulness and expectation of likelihood are considered discretionary circumstances that play an adjustment role in the severity of the punishment.

In Chinese criminal law, anticipation of possibility has found a reasonable home, that is, to play a role in the discretionary circumstances. This not only reflects the respect for humanity in China's criminal law, but also demonstrates the principle of fairness and justice in the practice of criminal punishment. In short, expecting possibility and social harmfulness play a key role in the judgment of crime and non-crime, and their interaction makes China's criminal law take into account the care of humanity while ensuring fairness and justice. [19]

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