

Researches on the crime of major engineering safety accidents in our country

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Abstract: *Under the advocacy of the people-oriented concept and the promotion of comprehensive rule of law, China's current major engineering safety accident crimes can no longer solve the frequent quality and safety problems in the field of construction projects, meet judicial practice and the actual needs of the people. This paper puts forward three problems arising in the application of this crime, and analyzes the causes from both subjective and objective aspects; Put forward countermeasures and suggestions for the problem, and provide a theoretical reference for the legislative and judicial application of this crime.*

Keywords: *Crime of major safety accidents in engineering; Status of application; Problem analysis; Dangerous offenders; Countermeasures and suggestions*

1. Introduction

China has entered a new era, with historic changes in the comprehensive rule of law, and the use of legal means to safeguard the legitimate rights and interests of the people has gradually become normalized. Major safety accidents are an important part of the field of construction engineering, involving national construction, such as the development of the construction industry and construction market, and the crime of major safety accidents in engineering construction as the main crime in the field of engineering construction is a frequent crime, which involves a wide range and affects serious interests. Conduct research on the crime of major safety accidents in engineering, including the criminal composition, legislative status and judicial application of major safety accident crimes, application issues and cause analysis, and legislative suggestions. The article will also think from a realistic perspective and find out the deficiencies in China's legislation on the crime of major engineering safety accidents. To provide the last line of defense for protecting the interests of the state, collectives and individuals, and protecting the safety of people's lives and property, give full play to the punishment and deterrent functions of criminal law in engineering quality and safety accidents, and the functions of education and transformation.^[1]

2. Problems existing in the application of the crime of major engineering safety accidents

2.1. Lack of criminal subject

Clarifying the criminal subject of the crime of major safety accidents in engineering is the primary prerequisite for accurately combating crime. This crime is a pure unit crime and a negligent crime, and the subject of the act can only be the construction, design, construction and project supervision units. Because the scope of the subject of the crime is too narrow, other perpetrators who should bear criminal responsibility are at large because they are not regulated, which means that the units and natural persons who meet the criminal act must be identified. In the application of this Law, the following three issues need to be solved urgently:

Firstly, how should a unit other than the subject of the crime be held accountable for causing major safety accidents in the project? For example, real estate companies, which include many businesses in project management, including project planning, design, construction, etc., real estate companies generally need to achieve maximum benefits through reasonable planning, cost reduction, shortening the construction period, etc., and must ensure the quality of each project construction link while achieving project goals. It has a heavy responsibility in the construction of the project, but because this law does not include it in the scope of the main body, it will only bear administrative liability and civil liability if it causes a major safety accident in the project.

Secondly, the unit subject of this crime is limited to units established in accordance with the law, and according to the provisions of this Law, units that cannot be qualified are not criminally liable if they are outside the law, and these units that have not obtained corresponding qualifications or are illegally established will be prosecuted for the crime of major liability accident after meeting the constituent elements other than the main body of this crime, resulting in disproportionate punishments.

Thirdly, according to the provisions of this Law, if a unit violates national regulations or lowers project quality standards and causes a major safety accident, the person directly responsible shall be investigated for criminal responsibility, but only the legal representative under the will of the unit can be held accountable, then in addition, natural persons who are not controlled by the will of the unit are excluded.

2.2. Unclear objective determination

The objective aspect of this crime is manifested as: "violating national regulations, lowering project quality standards, and causing major safety accidents", and there are the following three problems in the application of this law: On one hand, China has not clarified the content of violations of national regulations in many laws and regulations in the field of engineering construction, and how the judicial authorities apply relevant laws and regulations to determine the violation of national regulations by units; On the other hand, according to the binding, content, attributes and level of this crime, engineering quality standards can be divided into different categories, and in the face of standards at different levels of coercion, how to confirm the behavior of people lowering engineering quality standards. Besides, causing a major safety accident is crucial to the distinction between crime and non-crime, and how should the specific harmful result of this crime be understood. This requires characterizing "safety incidents" and further clarifying the criteria for identifying "major safety incidents". China's traditional theory of negligence crime lacks legislative norms and guidance for dangerous offenders of negligence. For example, although this crime involves actual perpetrators, in order to maintain the modesty of the punishment and prevent the criminal law from expanding the scope of negligent crimes indefinitely and violating human rights, the actual results of this crime are used as the elements for punishing negligent crimes. Therefore, China cannot reasonably and effectively avoid major safety accidents in the field of engineering construction.

2.3. Unreasonable penalty setting

Punishment is the basic goal of sentencing, and there are the following problems in the application of punishment for this crime: 1) This crime adopts a single punishment system to punish the direct personnel of the unit, and excludes the unit as the main body of the crime, resulting in a disconnect between the crime and the punishment; 2) The amount of the fine is uncertain and there is no corresponding limit, and the judicial application standards are different; 3) The lack of qualified penalties has led to the fact that administrative penalties are often used instead of criminal penalties for safety accidents in the engineering field, and the flexibility in the application of criminal penalties is not high; 4) The lower statutory penalty does not conform to the principle of proportionality of punishment for criminal law. The specific analysis is as follows:

2.3.1. Disadvantages of the Single Penalty System

The reason for applying the single punishment system to this crime is that if the punishment unit is punished, it will harm the interests of innocent ordinary employees and violate the principle of self-responsibility. For this reason, the crime of major safety accidents in China's engineering only imposes fixed-term imprisonment and fines on the personnel directly responsible for causing serious consequences, but the system is unreasonable for this crime, the directly responsible personnel as a member of the unit as a whole, the personal will to the construction of the project is extremely weak, after the occurrence of major safety accidents, the relevant responsible personnel as "scapegoats" in accordance with this law to pursue responsibility, for the construction, construction units, etc. Staff who are fired take the blame for the main body. This phenomenon that concentrating the social harm brought by the enterprise on the individual will result in the actual profit of the unit not matching its criminal liability, which is contrary to the original intention of adopting the single penalty system.

2.3.2. Uncertain amount of fine

Article 137 of China's Criminal Law stipulates that after the unit constitutes this crime, the directly responsible personnel are fined and fined, but the amount or range of the fine is not clarified, which

leaves the judge with greater discretion, and it is also a blank for judicial application, especially this crime only targets the directly responsible person to pursue responsibility, does not limit the amount of the fine to the unit and individual, and the deterrent of the fine as an additional punishment to the crime is not high, and it is even more itchy for the crime of major safety accidents in engineering that is more harmful to the society of this crime.

2.3.3. Lack of qualification

China's criminal law does not hold units accountable, nor does it set up qualification penalties for them, that is, restrictions on the right to engage in occupations related to the engineering field. After all, the qualification punishment as an administrative punishment is very different from the qualification sentence as a criminal punishment, with the promotion of technological development, the division of labor in construction units is becoming more and more detailed, and the sensitivity of liberal punishment and property in essence to the field is poor, and China's ensuing unit violations only "replace punishment with punishment", which is not fully practical as a "stopgap measure".

2.3.4. Lower statutory sentences

The crime of major engineering safety accidents is a crime that endangers public safety, infringes on public and private property and construction management systems, and the maximum statutory penalty for this crime is only 10 years for major engineering safety accidents that infringe on public safety and cause great harm to society.

3. Countermeasures and Suggestions for Perfecting the Crime of Major Engineering Safety Accidents in my country

3.1. To expand the scope of criminal subjects

3.1.1. To add real estate companies as crime subjects

The responsibility and role of real estate development companies in project quality management play a pivotal role, as the main body of project construction, participate in the whole process of its development and construction projects, real estate project quality as the core of project construction, is the key to determine the success or failure of project construction. With the rapid development of the economy, the focus of real estate construction has expanded from residential areas to commercial areas, tourist areas, industrial zones and other fields, under the socialist market economic system, the general requirements for construction quality generally rely on the planning, organization, management of real estate development companies to achieve, and the prevention and control of construction accidents on the one hand depends on the construction unit, design unit, construction unit, project supervision unit to comply with the relevant national laws and regulations, to ensure the results of all links of project construction. On the other hand, it is also necessary for real estate development companies to regularly carry out effective quality control, assume the overall responsibility of engineering projects, act in accordance with infrastructure construction procedures, and improve the quality assurance system of projects. This crime does not include real estate companies in the subject of the crime, and cannot be regulated through the criminal law, so it is of practical significance to include real estate companies in the scope of the main body of this crime.

3.1.2. To add human-sex organizations as the subject of crime

Article 30 of China's Criminal Law stipulates that "if a company, enterprise, institution, institution or organization commits an act that endangers society and is committed by the law, it shall bear criminal responsibility." "However, in practice, not all organizations engaged in construction activities have the qualifications and conditions stipulated by law, and there are not a few construction units that have not obtained the corresponding qualification conditions or are illegally established to engage in engineering design, construction and supervision, and the lowering of project quality standards driven by interests has caused major safety accidents." The above organizations are no different from legally qualified units committing this crime in terms of social harm, and pursuing criminal responsibility for the crime of major engineering safety accidents is in line with the legislative purpose of establishing this crime in China, conforms to the unity of substance and form, and conforms to the unity of power and obligation, behavior and identity. To this end, the current solution is to amend this law and add a human cooperation organization, so that the subject of this crime is not limited to pure units.

3.1.3. The addition of natural persons as the subject of crime

According to the objective elements of the crime of major safety accidents in engineering, it can be known that natural persons have violated national regulations and lowered project quality standards, and in judicial practice, the perpetrator often determines the responsibility for the handling of major safety accidents caused by unauthorized decisions, but crimes of the same nature are held accountable for the crime of endangering public safety by dangerous methods through negligence in Article 115 of the Criminal Law, and the infringement of legal interests by both crimes is public safety. However, the punishment of the former is significantly lower, which violates the principle of proportionality of criminal responsibility and punishment, which shows the necessity of setting natural persons as the subject of crime. From the comparison before and after the amendment to the Work Safety Law, it can be seen that China adheres to the people-centered work of safe production, revokes the corresponding qualifications and qualifications of those directly responsible for violating Article 90 of the "Work Safety Law" law, and shall not engage in safety assessment, certification, testing and inspection work for five years; Where a crime is constituted, criminal responsibility shall be pursued in accordance with the relevant provisions of the Criminal Law. This is a measure to accelerate the legislative revision work to keep pace with the times, respond to social concerns and meet the needs of reality. The pursuit of safety is the primary goal of the current construction field, and the safety director system may be included in legislation, which shows that the role of natural persons in engineering construction is becoming more and more important. Therefore, if the person directly responsible for the crime or punished by this crime is held accountable only in accordance with article 137 of the Criminal Law, the expected effect will not be achieved.

3.2. Objective aspects of crime

3.2.1. Clarify the objective behavior of crime

First, the judicial organ shall, in accordance with Article 96 of the Criminal Law, the provisions of the Construction Law on quality management of construction projects and the Regulations of the State Council on quality management of construction projects, conclude that the national provisions for this crime are limited to laws and decisions formulated by the National People's Congress and its Standing Committee on project quality management; Secondly, the understanding of engineering quality standards cannot only stop at whether they are named in the form of the word standard, but should take China's mandatory provisions in engineering construction, that is, national mandatory technical standards; Finally, the safety accidents in this crime refer specifically to engineering quality accidents rather than engineering safety accidents; The prosecution criteria for major safety accidents should be determined by whether they constitute casualties, direct economic losses and other serious consequences.

3.2.2. Dangerous offender for the crime of major safety accident in construction

It is recommended that China add dangerous criminals to the crime of major engineering safety accidents.^[2]"The difference between a specific dangerous offender and an actual offender is not a difference in the standard of rules, but in the fact that the former, although it does not produce an actual harmful result, creates a 'dangerous result that may lead to actual harm' for the legal interest that needs to be protected".^[3]For example, the eighth amendment to China's Criminal Law has been amended to determine the crime of environmental pollution, which does not require the actual harmful result of causing a major environmental pollution accident, as long as it causes environmental pollution and the consequences are serious, the crime is established, and the danger of the act only reduces the difficulty of judicial application and plays a good role in protecting legal interests. At present, in the accidents caused by the quality of the project, Japan, Thailand, Switzerland and Taiwan have the crime of regulating the construction project with the dangerous negligence criminal. Amendment 11 to the Criminal Law adds the crime of dangerous work in terms of production safety.^[4]However, the research on dangerous negligence offenders in China is still more from the perspective of legislative theory or the nature judgment and interpretation theory of some specific crimes. At present, many countries in the world's major civil law systems adopt dangerous crimes of negligence in the field of crimes endangering public safety, such as the content stipulated in Chapter 28 of the German Criminal Code, and China has an intersection and vacuum between administrative and criminal law in this field, either repeatedly setting up laws, regulations and normative documents in a certain field, or lacking prevention and punishment for serious negligence, it is recommended that China learn from the legislative experience of other countries and add dangerous criminals on the basis of the crime of major safety accidents. Or directly set the crime of major dangerous accidents in negligent engineering, so as to effectively play the preventive and deterrent role of criminal law and prevent chaos in the field of engineering construction.

3.2.3. To improve the setting of penalties

As an important criminal legislative activity in China, the setting of criminal punishment links crime with punishment, and China's criminal law sets different levels of statutory punishment to adjust the relationship between crime and punishment according to the symmetry and balance between the social harmfulness of crime, criminal responsibility and the severity of punishment. For the crime of major safety accidents in engineering, the reasonable allocation of the range and type of punishment will effectively reduce the frequency of safety accidents in the engineering field and give play to the legal protection function of criminal law.

First of all, the unit is held accountable under the double penalty system, and under the punishment mode of the single penalty system, the attack on the relevant unit subject of this crime lacks pertinence and effectiveness. At present, the use of the punishment model of the double penalty system has become a global legislative trend, and the author suggests that under the guidance of the theory of joint and several criminal responsibility, the legislative model of the double punishment system should be used to hold the unit subject accountable.^[5] That is, if a member of a unit violates national regulations or lowers project quality standards in order to realize the interests of the unit, resulting in a major safety accident in the project, the unit shall be regarded as the real criminal subject, and the directly responsible person shall be punished based on the joint and several liability between the unit and the members of the unit.

Secondly, clarify the amount of the fine. At present, China has only one kind of fine for the entity of the unit, and on this basis, clarifying the amount of the fine is of great guiding significance for giving play to judges' discretion. China's prohibition of absolutely indefinite sentences, reflected in the fines, should set different fines. Due to the difference in the nature of property between the entity and the natural person, the difference in the standard of the fine for this crime should be reflected, that is, when the double penalty system is implemented, two sets of standards should be implemented between the unit and the individual, and the objective factors such as the scale of the project, the cost, the capital investment, and the degree of fault of the natural person should be considered. For units, the maximum and minimum amounts should be set, which should be applied in combination with the degree of social harm caused by the crime of major safety accidents in engineering and the compensation after the fact.

Thirdly, the eligibility penalty is added. Introduce qualifying sentences into unit crimes. For example, Jiangsu Province will implement joint disciplinary measures for accident-responsible enterprises from May 2020 to restrict the bidding qualifications of construction enterprises and supervision enterprises in the field of construction projects, which starts from the administrative field. The obligation of care, care and avoidance for units and individuals has been raised to a higher level, but punishment cannot be substituted for punishment, and the practice of advanced legislative countries should be followed, such as the United Kingdom and the United States by imposing qualifying sentences on units, and the Italian Penal Code includes qualifying penalties as an additional punishment in articles 19, 30 and 32. Therefore, the addition of qualification punishment to this crime has reference significance for disqualifying units that commit major engineering safety accidents.

Finally, the statutory penalty should be increased. As we all know, the society's expectations for the foresight and avoidance of obligations of practitioners in the field of engineering are higher than those of ordinary people, and the subjective malignancy of the perpetrator or unit is an important factor affecting sentencing, in view of the social harm brought by this crime with the continuous expansion of engineering technology and scale, the sentencing range of this crime should be increased accordingly, in line with the principle of proportionality of criminal responsibility and punishment, and weaken the lag in the protection of legal interests brought about by social development.

4. Conclusion

Only from the legislative perspective analysis cannot make the prevention of major safety accidents in the project, only under the joint efforts of legislative leadership, judicial implementation, government supervision, industry self-discipline, unit consciousness, and social supervision, China's construction industry can develop steadily, and the sense of gain, happiness and security of our people will be more secure.

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