The Expansion Risk of Micro-crime and the Construction of Governance System in China from the Perspective of Criminal Integration-- Taking the Drunk Driving Type Dangerous Driving Crime as an Example

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Abstract: In recent years, under the guidance of the active view of criminal law, the risk of the continuous expansion of criminal law to punish micro-crimes has been further highlighted. This trend, while increasing the guarantee of legal interests, has also brought some negative effects. Among them, the most typical is the judicial application of drunk dangerous driving crime, which is mainly manifested as follows: the number of cases is huge, the judicial cost increases significantly; the discretion standard is not uniform, leading to judicial injustice; the scope of the crime is too wide, and the criminal consequences are too heavy. To this end, it is necessary to give full play to the initiative of the judicial organs, activate the application of the "proviso" clause and clarify the scope of non-prosecution, and realize the appropriate restriction of the judicial disposal; continuously optimize the dual punishment mechanism in China, explore the elimination mechanism of the criminal record of micro crimes and strengthen the legal publicity. The prosecution of micro crimes should be strictly controlled from the substantive and procedural aspects, the path of micro crimes should be improved, and the governance system of micro crimes should be constructed, so as to reflect the criminal policy of combining mercy with severity, and constantly improve the social governance effect of criminal justice.

Key words: drunk driving, dangerous driving crime, micro crime expansion, micro crime governance

1. The Expansion of Criminal Legislation and its Triggered Thinking

In recent years, criminal legislation has shown a positive trend, the scope of criminal punishment is expanding, and the focus of criminal punishment is inclined to the abstract danger. At the same time, the classification of crime began to change, from the past felony and misdemeanors to the micro crime, and the concept of micro crime also gradually formed. When the crime of obstructing safe driving and the crime of throwing high air were added in the Amendment to the Criminal Law of the People's Republic of China, the definition of micro crime was further clarified. At present, the mainstream view of the academic circle is that the micro crime corresponding to felony and misdemeanor at the level of punishment is the crime of criminal detention and criminal detention. After the Criminal Law of the People's Republic of China in 1997, China promoted the pace of criminal legislation with the rate of less than two annual revisions and the total amount of 11 amendments of the criminal law. To be specific, on the one hand, the legislative department set up a large number of micro-crime system, and introduced some administrative illegal acts into the punishment circle, in order to reflect the sanction effect of criminal law. On the other hand, by adjusting the crime of the existing criminal charges, increase the scope of punishment, to produce a large number of substantial microcrimes. With the expansion of the micro crime system legislation and crime circle, ordinary citizens encounter criminal prosecution standard of increasing probability, especially for dangerous driving, use forged identity documents, instead of examination life is closely linked with ordinary citizens of micro crime, led to the past for the average person seemingly unreachable criminal charges, in now is more and more close.

The author believes that under the premise that the current legislature has set the criminal elements and penalties for micro-crime, blindly attacking and opposing is not the solution. How to give full play to the initiative of judicial organs on the basis of existing legislation, explore the personalized supporting measures of micro-crime, so as to eliminate the negative impact brought by legislation is a problem that should be focused on under the background of micro-crime expansion. Therefore, the author takes the high incidence of drunk driving dangerous driving in...
practice as the breakthrough point, analyzes the problems caused by the micro crime punishment, and tries to explore the construction scheme of the micro crime governance system.

2. Empirical Analysis of Drunk Driving Type of Dangerous Driving Crime

Up to now, drunk driving has been punished for more than ten years. In order to accurately grasp the current judicial situation of dangerous driving crime and carry out targeted research, the author conducted empirical research on the cases handled by the basic people's courts in Hebei Province as samples.

2.1 Subject of Crime

According to the statistics of 300 judgments of drunk dangerous driving crime, from the cultural level of criminal subject, 245 cases had junior high school education or below, accounting for 81.7%; from the perspective of occupation distribution, the crime is dominated by farmers and workers, accounting for 66.7% (see Figure 1 and Figure 2 for details). This shows that the subject of this crime is mainly people with low cultural level. The legal concept of this kind of people is relatively weak, and the lack of clear understanding of the severity of punishment and its accompanying consequences, often accompanied by fluke psychology.

2.2 Distribution of Motor Vehicle Types

From the perspective of the characteristics of the vehicles involved, the vehicles involved were mainly automobiles and electric vehicles exceeding the standard (electric vehicles exceeding the standard of non-motor vehicles). According to statistical data, 187 vehicles involved were automobiles (including small buses and trucks), accounting for 62.3% of all the cases. In addition, there are 75 electric vehicles exceeding the standard, accounting for 25% (see Figure 3 for details). This shows that in judicial practice, some electric vehicles exceeding the standard have been included in the scope of punishment of dangerous driving crime.

2.3 Proof Probation

In order to understand the application rate of drunk dangerous driving in different regions of China, the author selected 8 provinces and municipalities directly under the Central Government with high incidence rate as samples, searched the total number of cases of drunk dangerous driving and the number of probation cases on the judgment documents, and calculated the application rate of probation in different regions. It can be seen that the provinces and cities for drunk dangerous driving crime probation attitude difference is bigger, the Beijing judicial authorities for drunk driving probation strictly, Shanghai, Tianjin and other places the judicial organs are relatively moderate, and the judicial organs in Yunnan province for drunk driving dangerous driving probation support, probation rate is higher.

3. Analysis of the Practical Problems of Drunk Driving Type and Dangerous Driving Crime

Undeniably, the punishment of drunk driving has achieved certain results in social governance. However, in the more than 10 years for the judicial practice of drunk driving process, also exposed a lot of judicial problems, the author here discusses one by one.
3.1 The Number of Cases is Huge, and the Judicial Costs are Prominent

Since the punishment of drunk driving, the crime rate of dangerous driving has increased rapidly year by year, reaching a peak in 2019, totaling 276,368 cases. By 2022, according to the work report of the Supreme People's Procuratorate, the number of criminal suspects prosecuted with the crime of dangerous driving had exceeded 290,000, 1.42 times that of ordinary thieves. It can be said that "drunk driving" has become the first major crime. Among the more than one million criminal crimes in China, drunk driving accounts for one fourth, and hundreds of thousands of people are accused of criminal crimes for drunk driving every year. It is precisely because of the surge of dangerous driving crimes, mainly drunk driving, leading to the continuous expansion of the opposite of the whole society, which also brings a huge burden to the law enforcement agencies and the judicial organs.

3.2 Different Standards of Judicial Discretion Can Easily Lead to the Same Case

In the current judicial practice of drunk driving, some procuratorates have examined and prosecuted the cases with the similar nature and the similar blood alcohol content of the perpetrator, while some have been relatively unpunished, and even a large number of different penalties in the same case. The reason for this kind of judicial phenomenon, the author believes that the legal application standard of dangerous driving crime is not clear enough. This involves the procuratorial organ for the understanding and application of the minor circumstances of the crime, the legal maximum punishment of dangerous driving crime is only 6 months of detention, the crime itself is relatively minor, so what is the crime of dangerous driving crime is minor? What subjective or objective factors show the slight seriousness of the crime? In the case that the current laws and regulations are not regulated by a clear and enumerated way, it is difficult to grasp and accurately judge in the complicated dangerous driving cases, which thus leads to the chaos of the prosecution of some cases that should not be examined and prosecuted.

3.3 The Application of Probation is Unbalanced, and the Judicial Credibility is Reduced

Probation is a conditional system of suspending the execution of punishment, which not only reflects the punishment of the criminal by the law, but also reflects the humanitarian spirit of the law. While maintaining the effectiveness of the original sentence, the criminal is given the opportunity to reform, and the reasonable application of the probation system in the crime of dangerous driving can have a good effect on the reform and education of the criminal. However, due to the lack of systematic legal norms in the standardization of dangerous driving crimes, and the differences in the mastery and application of sentencing circumstances, the rate of probation system to dangerous driving crimes is different greatly in the people's courts in different regions. Secondly, even the people's courts in the same place have different levels of the probation scale of dangerous driving crime. This was not only disputed by the public, but also seriously reduced the credibility of the judicial organs.

3.4 Crime, the Accompanying effect is too Heavy, Which is not Conducive to the Return of Criminals to Society

According to the first paragraph of Article 133 of the Criminal Law, anyone who drives a vehicle while drunk shall be sentenced to criminal detention and be fined. Dedetention is usually a week to six months, and although the criminal punishment is relatively light, the accompanying effect is significant. For example, according to the Regulations on the Punishment of Civil Servants in Administrative Organs, civil servants of administrative organs sentenced to criminal punishment will be dismissed from administrative sanctions. Judges 'Law, Lawyers' Law, Teacher's Law and many other laws stipulate that if the perpetrator violates the criminal law, he will be restricted from continuing to continue to engage in relevant business. Although the punishment of drunk driving itself is not heavy, the criminal may lose his job due to the minor social misconduct, and his personal economy and credit investigation will be greatly affected. In addition, it will even indirectly affect his children's admission, entry and public examination.

3.5 There is a Gap in the Execution Connection, and it is Difficult to Identify Excessive Electric Vehicles

At present, there is a legislative vacuum in drunk driving cases. According to the Road Traffic Safety Law, the blood alcohol content of motor vehicle drivers is below 80mg / 100ml, which belongs to drinking and driving, is administrative detention and fine; the motor vehicle drivers blood alcohol content is above 80mg / 100ml, belongs to drunk driving, is a criminal act, shall be criminal detention. But if the actor for the crime minor after the prosecution discretionary not prosecution, the current law only stipulates the revoked driving license of administrative punishment, and drinking driving still need to be fined, revocation of driving license and administrative detention sanctions, more serious than drinking driving drunk driving not prosecute the actor, but not by administrative law in terms of personal and property sanctions, this obviously does not conform to the most basic law.

On the other hand, in drunk driving cases, whether the electric vehicles exceeding the standard can be regarded as motor vehicles, and whether the drunken riding electric vehicles exceeding the standard should be punished, neither criminal law or administrative law, there is a great controversy in judicial practice. A point of opinion holds that as long as the actor drunk driving reaches the corresponding criminal standard, and the electric vehicle is identified by the authority as exceeding the standard, he should be convicted and punished for the crime of dangerous driving. And the opposite view of the referee view, dangerous driving crime in the legal concept of motor vehicle should be consistent with the corresponding
3.6 The Educational Level of the Actor is Low, and the Criminal Prevention Effect is Poor

The current dangerous driving crime subject is given priority to with low level of culture, investigate its reason, on the one hand, is its own legal consciousness, the consequences of the consequences of low, even if it may understand drunk driving motor vehicle is a criminal offence, but not deeply aware of the seriousness of the criminal consequences in our country. On the other hand, the functional departments do not publicize the relevant legal knowledge of the crime of dangerous driving properly, and fail to keep up with the characteristics of The Times to establish a diversified publicity and governance mode. In fact, the setting of drunk dangerous driving crime is actually the criminal punishment for traffic accidents, and the drunk driving behavior without specific real consequences as a crime, which is the embodiment of the precondition of legal benefit protection. Its main purpose is to prevent crime, not blindly fight crime. First analysis from the perspective of general prevention, dangerous driving crime as the violation of the premise of legal regulations, and natural there exist obvious difference, people's illegal awareness may be small, combined with the low level of culture for the absolute subject of dangerous driving crime, more need to rely on functional departments of propaganda guidance and warning education, under the background of propaganda work does not reach the designated position, general prevention is difficult to achieve the desired effect. Then, from the perspective of special prevention, the statutory punishment of dangerous driving crime is less than six months. One of the biggest disadvantages of short-term free punishment is that it is easy to cause cross-infection between criminals, which may make the original subjective malignant is not strong criminals produce greater possibility of social harm.

4. The Construction Path of the Micro-Crime Governance System Under the Perspective of Drunk Driving Type and Dangerous Driving Crime

In recent years, with the modernization and science and technology of China, various social security problems have followed, and people's requirements for security and order are also constantly improving. Under the background of risk society, the theory of risk criminal law with the goal of preventing risk has triggered a heated discussion in the field of criminal law circles in China. According to this theory, the traditional theory of criminal law has been unable to effectively deal with risks, so the scope of criminal law protection should be raised to a higher level, so as to meet the higher requirements of the risk society for safety. The risk criminal law aims to reform the traditional criminal law theory comprehensively, and add the abstract dangerous crime and other micro-crimes, so as to expand the scope of punishment, establish a strict criminal legal system, and effectively prevent and control risks. But the author thinks that, in the expansion of micro crime, criminal crime should not become the trend of The Times, and should be vigilant and suppression, legislation, justice should protect the criminal law of modesty, guidance for guidance, should give play to the role of the initiative of the judicial organs, to avoid criminal law too interference in People's Daily behavior, is also the law maximum legitimacy, the rationality of the value orientation.

4.1 Activate and Strengthen the Application of the Proviso Clause to Microsin

The author thinks that the "proviso" regulation is an important embodiment of the qualitative crime and the dual punishment system in China. This clause excludes illegal acts with significant minor circumstances and little harm from the criminal punishment circle, and provides a reasonable guarantee for citizens to commit crimes. In practice, people directly quote the proviso to criminalize them. Because the legal micro crime in China's criminal law mostly develop from the administrative illegal, its harm is between the criminal behavior and the illegal behavior, so there is sufficient theoretical basis for the crime according to the proviso. Considering the basic rules and the rank of different rules, the establishment of specific rules should be bound by the basic rules. "Proiso" belongs to the general provisions, while the crime of dangerous driving belongs to the specific rules, so whether the crime needs to investigate whether the behavior is significantly minor and the harm is not big. But "book, on the other hand," clause can form the constraint of micro crime rules, for the application of administrative law enforcement leave broader room, promote the dual punishment system under the Chinese punishment policy execution more smoothly, prevent the inertia of judicial prosecution too compressed applicable space of administrative law enforcement, at the same time also can reduce the possibility of citizens by criminal investigation.

4.2 Clarify the Legal Application Standards of Non-Prosecution for Micro-crimes

For the decision whether to apply the discretionary non-prosecution, the judgment of the minor circumstances of the crime is crucial, but as mentioned above, the minor circumstances of the crime is a relatively flexible criterion, and cannot be measured only by the absolute objective alcohol concentration. In the author's opinion, whether the criminal circumstances of the drunk driving case are minor should follow the criteria of type and specificity, comprehensively analyze the time and place of the crime, the speed and distance of the vehicle and the alcohol concentration, so as to make a case judgment. This
requires the relevant legislature, the judicial department issued the corresponding system, typed to develop dangerous driving crime discretionary not prosecution law norms, such as regulations for higher alcohol content, but the person actively expressed remorse, vehicle very short distance, in small traffic, can be discretionary not prosecution, but for relatively low alcohol content, but the person pleaded remorse, vehicle speed or escape traffic police investigation circumstances, also can consider the whole case, prosecuted in accordance with the law.

4.3 Standardize the Judicial Application of Micro-Crime Probation

For the crime of drunk driving, good probation can realize the dual value of protecting legal interests and protecting human rights, and also avoid the disadvantages of short-term cross-infection of micro crime. According to the above presented around the drunk driving case probation rate, and similar cases probation applicable, the judicial organs for drunk driving case probation has more serious nonstandard phenomenon, the reason is that the lack of clear unified probation standard, the provinces and cities of probation standards produced obvious lenient difference, the judge also has a larger discretion scale, lead to some areas probation rate abnormal or abnormal. Therefore, the standard of probation should be unified and clear, the same behavior should be measured in the same scale, and the best should avoid the phenomenon of different sentences in the same case as much as possible. The author suggests that the Supreme People's Court and the Supreme People's Procuratorate should make detailed judicial interpretations as soon as possible on the basis of fully investigating the judgment results of various places, reduce the discretion of judges as far as possible, and build a scientific probation evaluation system, so that the judgment scale of drunk driving cases has a relatively unified standard.

4.4 Establishing a System for Eliminating Criminal Records for Micro-Crimes

At present, China's legal system has not made clear provisions on the elimination of criminal records, only about the system of sealing the criminal records of minors, but the system itself is not really the actual elimination of criminal records, it is only a confidentiality measure. In addition, this system is only aimed at minors, and the vast majority of crimes in China are adults as the subject of crime, the application space is very limited. Micro-crimes such as the crime of dangerous driving are only a minor violation, whether subjective or objectively harmful, but according to the current laws and regulations, the criminal sanctions are similar to other serious criminals, which is obviously not conducive to the reintegration of the actors into society. Therefore, the establishment of an effective criminal clearance mechanism to balance the risk of drunk driving, such as dangerous driving, is not only conducive to safeguard the basic human rights of citizens, but also can provide help for social development. As for how to eliminate system, the author suggested in article 100 of the criminal law, namely for crime has at least 18 years of age, in addition to the offending crime endangering national security, terrorist activities organization crime, and murder, robbery, rape, and other serious threats of violent crime, if the final punishment is in fixed-term imprisonment of not more than 1 year or criminal detention, after its 5 years also not again crime, the community correction institutions, can eliminate criminal record in accordance with the law.

4.5 Optimize the Execution Connection of Micro-Crimes

For the problem of dangerous driving crime execution, the author suggests in the road traffic safety law of article 91 increase 1: for drunk driving motor vehicle crime minor not prosecution, or by the court is exempted from criminal punishment, the public security organ to 15 detention, and above 2000 yuan, a fine of less than 5000 yuan. Secondly, after the procuratorial organ makes the discretionary decision not to prosecute, even if the traffic police department has made the administrative punishment of revoking the driving license of the person not prosecuted, the procuratorial organ should also put forward procuratorial suggestions to the public security organ, and the public security organ shall give corresponding punishment in accordance with the "Road Traffic Safety Law".

As for the judicial identification of electric vehicles exceeding the standard in drunk driving cases, the author believes that the criminal law takes the punishment of criminals as a means to achieve the purpose of general prevention and special prevention in the execution of punishment. Under the current legislative and social background, the level of legal knowledge of the Chinese people is actually not strong. In real life, many people do not realize that the electric vehicles exceeding the standard can not be delayed. The relevant departments should formulate relevant laws and regulations as soon as possible to clarify the legal attributes of electric vehicles exceeding the standard, prevent the occurrence of judicial disputes, and provide strong legal support for judicial practice.

4.6 Strengthen the Publicity of the Concept of the Rule of Law for Micro-Crimes

At present, the problem of drunk driving is becoming more and more prominent, and the problem cannot be completely solved only through criminal punishment. More preventive measures must be taken to prevent and control it from the source of risk, so as to curb the emergence of drunk driving behavior to the greatest extent. As the frontier department of investigating and punishing drunk driving, the public security and traffic department should strengthen the publicity of law popularization and integrate the publicity of the concept of rule of law into the daily law enforcement process, so that more people
can understand the danger of drunk driving. The author suggests that the following ways should be adopted to make instructive drunk driving cases into brochures, showing the criminal sanctions faced by drunk driving motor vehicles, and especially emphasize that within the existing legal system in China, it will cause serious criminal consequences to oneself and his family. In addition, because workers and farmers are the absolute subject of the crime, the relevant departments can regularly hold legal publicity activities, invite professional jurists, lawyers, traffic police to the villages, communities can contact the public face to face, on-site lectures, and interact with the public, to answer some of their concerns. In this way, through the continuous efforts of all parties, to achieve the purpose of preventing drunk driving, so as to form a good social atmosphere of drunk refusing driving.

5. Conclusion

With the advent of risk society, microcrime has become a legislative practice, but how to correctly understand the role of micro crime in social governance activities and properly grasp its limits is still a problem worth discussing. Therefore, in the active view of criminal law as the mainstream of criminal legislation, we should deeply consider the rationality of micro-crime into punishment, explore the corresponding supporting measures, in order to achieve not only can effectively control risks, but also to maintain the characteristics of criminal law modesty, so as to improve the effectiveness of criminal justice in social governance.

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