Criminalized Healthcare Informal Payment as Bribery: A Case Study of Hungary

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Abstract

The criminal law system that public expect is not satisfied with simple typological splicing from doctrinal perspective but should regard the bribery crime system as a whole body of knowledge under the guidance of a certain principle. The legal interests of bribery crime from the point of normative protection purpose should include "the prohibition of undue advantages in duty or duty-related behavior" and "the equal opportunity of public resource distribution", and the relationship between the two is hierarchical. The "double-layer legal interest" structure can realize the logical self-consistency and integration of the bribery crime system by revealing the inherent mechanism of offering and receiving bribes, as well as giving effective guidance on difficult and complicated types of bribery in judicial practice, such as "afterwards bribery", "emotional investment" and the standards of accomplished and attempted bribery. However, justification of criminalization does not necessarily lead to criminal legislation, it depends on the change of the whole criminal situation and needs to be considered from a developmental perspective. Therefore, it is important to form a multi-level social governance complex.

Keywords

Informal payment, Bribery, Criminal policy, Legal interest, Criminalization

Introduction

In Hungary, informal payment in public healthcare is a widespread issue, with short periods of elevated public interest alternating long periods of neglect (Gaal, 2006). However, since the new regulation, Act C of 2020 on the Employment Status of Health Workers, passed on 6 October 2020 and came into force on 1 January 2021, informal payment has aroused public concern again for its criminalization. According to the latest Act, giving and accepting of informal payment is forbidden (considered a misdemeanor) and punishable with 1 year in prison, except small gift (<5% of the minimum wage, about 8,000Ft) presented after the treatment once in acute cases, and once in two months in chronic cases.

In other words, patients who give informal payment commit active bribery while a healthcare worker (or a person working in healthcare or any other person on account of such a person relating to the provision of a healthcare service) commit passive bribery [1].

Until now, there are a certain number of theoretical studies as well as empirical research on informal payment, almost all of them discussed from the perspective of sociology, such as the history and development of informal payment, the motivation of the individuals involved, the impact on healthcare system performance and so on [2,3]. It is worth mentioning that some scholars regard informal payment as 'corruption' when expressing the concept [4]. The research results are shown in Table 1.

The existing research on the relationship between informal payment and corruption mainly focuses on sociological interpretations, largely lacking an explicit explanation of its legal legitimacy. In other words, there is currently no systematic and comprehensive explanation of why informal payment is criminalized as bribery. This significant gap in research clearly highlights the need for a

more thorough examination of the legal and ethical justifications for criminalizing informal payments.

Table 1. Concepts of informal payment link to 'corruption'.

Author	Year	Definition of informal payment
Anderson	2000	'The gifts, counter services, and money provided by patients to health care providers, pozornost, are in some instances like bribes, for example when the patient feels it is necessary to receive proper care, and in some instances merely a small token of gratitude. '
Thampi	2002	'Victims of corruption reported large payments given as bribes to access and use the public healthcare systems. '
Lewis	2007	'Payments to individuals or institutions in cash or in kind made outside official payment channels for services that are meant to be covered by the public health care system. Such private payments to public personnel have created an informal market for healthcare within the confines of the public healthcare service network. And are a form of corruption. '
Hunt	2007	'[...] unofficial payments (which I call bribes) [...].'
Cockcroft et al.	2008	'Petty corruption in the health sector can manifest itself in several practices, including unofficial payments. '

In the theory of criminal law, what is the legal interest protected by the crime of bribery can always arouse the infinite discussion interest of jurists, but so far there is no consensus. Even in previous studies, the characterization of informal payment was a kind of 'endemic corruption' as part of daily life at the point at which it is no longer considered illegitimate [5].

This paper holds that the legal interest protected by the crime of informal payment is not only an in-depth theoretical inquiry into the legitimacy of the criminalization but also an inquiry into the scope of the punishment. The answer to this question is related to the reform of criminal law legislation and the formulation of judicial interpretation, which is of great theoretical and practical significance, and it is necessary to pay special attention.

Method lawmakers take legal norms to achieve a certain purpose, and any crime in the specific provisions of criminal law has its specification purpose. Based on the structure of criminal law norms, the specification protection purpose has different layers of macro, meso and micro.

In the macro layer, the specification protection purpose is equal to the purpose of criminal law, which in other words, the expected effect by the state to create and apply criminal law. As the expression in the preface of Criminal Code: '… with a view to protecting the inviolable and inalienable fundamental rights of human beings, as well as the independence, territorial integrity, economy and national assets of the country, it can be interpreted as a kind of legal interest protection. At the same time, this purpose guides the direction of the specification protection purpose of specific crimes in the sub rules.

(1) In the meso layer, the specification protection purpose mainly stands for the sub rules of crimes. As the current Criminal Code divides the special part into various categories of crimes, each category of crimes has a purpose of normative protection different from others [6]. For example, the freedom of sexual life and sexual morality, human dignity and certain fundamental rights', classified data and national data assets, and so on. Nevertheless, such purpose is abstracted from the system of specific provisions of criminal law, which does not have the significance of legal interpretation.

(2) In the micro layer, the specification protection purpose consists of both purpose of specific provisions in the general part and the purpose of specific crimes in the special part. Moreover, it is implied in specific criminal law norms, which has an obvious restrictive effect on the interpretation of criminal law [7]. However, it needs to be clear that the purpose in this layer is not completely equal to the original intention of legislation or the purpose of lawmakers. When it is difficult to accurately judge the original intention of legislation, it may also include the objective purpose that the criminal law norm should have.

(3) With the theory mentioned above, this paper would focus on the interpretation from the micro perspective. According to the research question on the legal interests of informal payment crimes, this paper would first raise two hypotheses based on distributive justice, discuss the logical relation between them, and then use specific informal payment crimes to test and verify [8]. Last but not the least, this paper would try to provide a feasible agenda for judicial practice as well as further research.

The specification protection purpose: distributive justice

The basic form of corruption is 'the exchange of political power and wealth or interests. Bribery crime involves the transfer and distribution of social public resources and interests, runs through many public fields such as politics, economy and society, and seriously damages social fairness and market fair competition. On the surface, bribery is a "victimless" crime. For example, the patient (active briber) voluntarily transfers his property to the medical (passive briber), which seems to be an autonomous disposal of property based on the will of citizens. In essence, the damaged part of public interest is shared by the bribery parties. Therefore, the social harmfulness of informal payment crime is determined by the degree of damage public interest. This paper holds that from the root, the specification protection purpose of informal payment crime and even the bribery crime system should be attributed to the distributive justice of social public resources. Therefore, it is vital to clarify what social distribution is as well as the meaning of distributive justice. Social life of human beings is an organic system composed of four links: production, distribution, exchange and consumption. The distribution based on historical materialism is not the distribution of material wealth in a narrow sense, but the distribution of all social resources, including material wealth, political rights and development opportunities [9].

Some social goods are distributed through people's free exchange. For example, when people buy clothes with different prices in the market, people with high consumption level buy expensive goods while people with low consumption level buy cheap goods. In the process of free exchange, many resources are reasonably allocated. Secondly, some social goods are distributed according to people's needs. The most typical example in this regard is healthcare resources. The public intuitively know that healthcare resources should be allocated to people with corresponding diseases (even if they can't afford it) rather than to healthy people who have money to buy drugs. Because the purpose of health care is to cure disease and save people, not to make money.

To meet people's needs for essential drugs, most countries in the world have established some form of medical security system [10]. And even realized free healthcare in some countries. Thirdly, some social goods are distributed according to one's performance in social competition, which is called the "desert principle". Such as opportunities for higher education, various awards and honors and so on. If individuals have better performance in relevant social competition, they will be allocated high-quality resources. The well-known principle of 'distribution according to work' is a kind of "desert principle". Through the explanation of the above three aspects, we can simply outline the realistic picture of social distribution, that is, the diversified distribution pattern in which market, need and

desert principle cooperates with each other. The following discussion will focus on how the principles of desert and need are linked to bribery.

The desert principle

The desert principle advocates distribution according to individual's performance in social competition. The better the performance, the greater the distribution share. Such distribution principle is consistent with human moral intuition and has a quite long history. As early as 2000 years ago in ancient Greece, Aristotle discussed this principle of distribution in detail. In his opinion, it should be distributed to everyone in the interests of their achievements and merits.

In the practice of distribution, desert principle dominates many fields of social distribution, such as education, employment, earnings, competition and so on. It can be said that the due principle is an important procedure for the distribution of social goods [11]. Then how to ensure the justice of distribution procedure and maintain social fairness and positive development? The key point is that workers from various professions should adhere to work norms, distribute earnings and rewards in strict accordance with relevant standards.

For example, the earnings (including basic salary and bonus) of employees in public healthcare institutions are uniformly distributed by state according to the doctor's practice standards, which belongs to "desert" earnings. However, if someone does not adhere to professional ethics and receives gratitude payment or gift from patients under the temptation of interests, such earnings cannot belong to the category of "desert". Because she has received corresponding earnings for duty-related behavior, she cannot receive additional earnings again. Informal payment would seriously affect the national unified earnings distribution of healthcare workers, which to some extent means undermine social justice.

The need principle

In the discussion of contemporary political philosophy, some scholars such as Harry Frank, David Miller and Michael Walzer support the need principle as a dominant distribution principle. Specifically, the need principle refers to meeting the 'basic needs' of all social members through social redistribution. Among them, "basic needs" are social resources recognized by people based on consensus and required for maintaining human's life, living quality, self-esteem and self-development [12].

In social distribution, the purpose of the principle of the need is to ensure the basic life of every social member. The objects are usually healthcare resources, primary education resources, affordable housing, unemployment relief and so on. The allocation of these public resources requires relevant policy implementers to first formulate standards to evaluate and examine individuals' qualifications to obtain these resources.

For example, for the allocation of healthcare resources, policy makers must specify the relevant amount of public medical treatment according to the need principle. For the distribution of affordable housing, policy makers should also formulate the minimum value of income and property of people who are eligible for the house [13]. After these standards are formulated, relevant workers must standardize their duty-related activities and abide by professional ethics, to ensure the smooth progress of social distribution based on the need principle.

Taking health care as an example. The purpose of medical treatment is to treat the sick and save people, and relevant medical resources should be allocated to those who really need them. Therefore, doctors as well as other healthcare workers should follow certain standards to diagnose and treat patients, that is, on the premise of curing related diseases, the cost is the least.

However, if doctors do not abide by professional norms, prescribe more drugs or expensive drugs and do unnecessary examinations for their own benefits, it will not only damage the interests and health of patients but also undermine distributive justice of healthcare resources [14].

Two levels of legal interests: interpretation and logic relation

In line with the desert principle and the need principle, it can be concluded that the basic connotation of distributive justice should be 'give everyone what they deserve'. Hence, informal payment crimes affect the distribution of interests from two aspects.

On the one hand, it involves the improper benefits of the active briber (expressed in BA); On the other hand, it involves the corrupt benefits of the passive briber (expressed in BP). The damage of social distributive justice is expressed in D, then D=BA+BP. Social public resources gather to a small number of people, which seriously distorts the interest distribution system. Correspondingly, the legal interests of informal payment crime should include two levels.

One is "the prohibition of undue advantage in duty or duty-related behavior" which is linked to the desert principle, and another is "the equal opportunity in public resources distribution" which linked to the need principle (Figure 1).

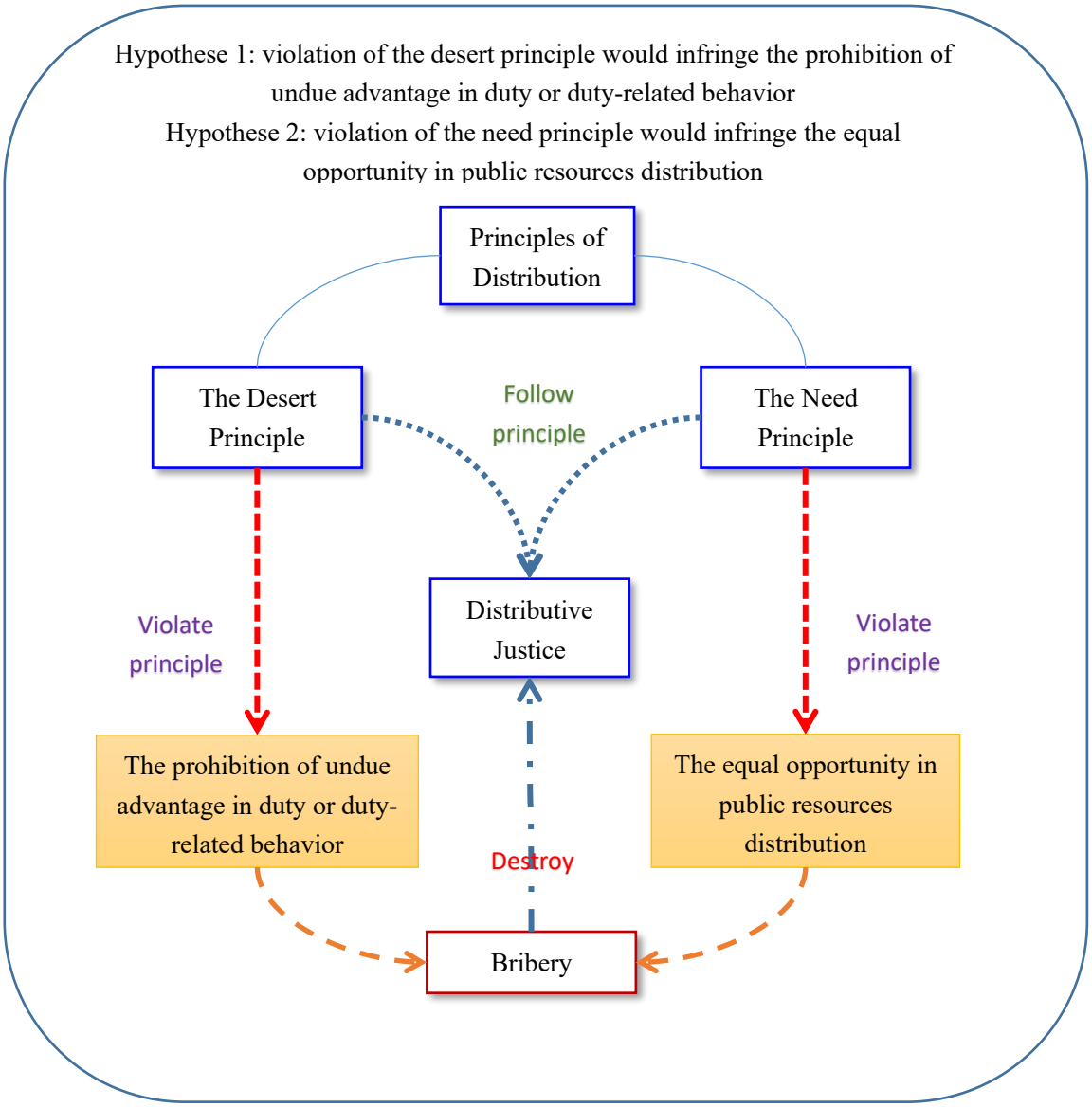

Figure 1. The logic from principles of distribution to bribery.

Since the legal interests of informal payment crime are the prohibition of undue advantage in duty or duty-related behavior and equal opportunities in the distribution of public resources, further speaking, we need to disclosure the logical relation between the two legal interests, is it a parallel or an

alternative relationship?

If the two are parallel, that is, bribery crime can only be constituted when the act infringes "the prohibition of undue advantage in duty or duty-related behavior" and "equal opportunity in the distribution of public resources" at the same time. Then, does "profit seeking behavior" mean that crime of informal payment is not established when it does not infringe equal opportunity of others in the distribution of public resources (for example, the doctor just received informal payment but does nothing beneficial for the patient)? This conclusion obviously narrows the scope of punishment for bribery.

As a typical form of bribery, the logic behind its expression is the duty relevance of accepting informal payments and does not set the establishment conditions of bribery on the premise of "profit-making behavior" for others. The Anti Commercial Bribery Code of Transparency International also stipulates that it is not necessary whether the person receiving the bribe has acted or whether he has acted as required, the important thing is that he has accepted the bribe, which itself constitutes a bribe.

If it is considered that the two legal interests are an alternative relation, that is, if the informal payment act infringes one of the legal interests, it constitutes the crime. Then even if the healthcare worker has no "money receiving behavior" and simply "profit-seeking behavior" for patients would be regarded as bribery just because she destroyed the equal opportunity in public medical resources. This logical conclusion is obviously untenable as it violates the basic consensus of "power-money transaction" of bribery crime.

To sum up, the logic between two legal interests is neither parallel nor alternative, but a "rank" relationship (Figure 2). In other words, there should be two types of informal payment crime. Type A (simply receiving informal payment) infringes the prohibition of undue advantage in duty or duty-related behavior, type B (receiving informal payment and seeking profit) violates both the prohibition of undue advantage in duty or duty-related behavior and the equal opportunity of public resource distribution.

Not all informal payment crimes infringe the equal opportunity of public resource distribution [15]. The degree of illegality of the two types is different. That is, receiving informal payment usually represents the lower limit of criminalized as bribery, while profit-seeking behavior might have a significant influence on sentencing.

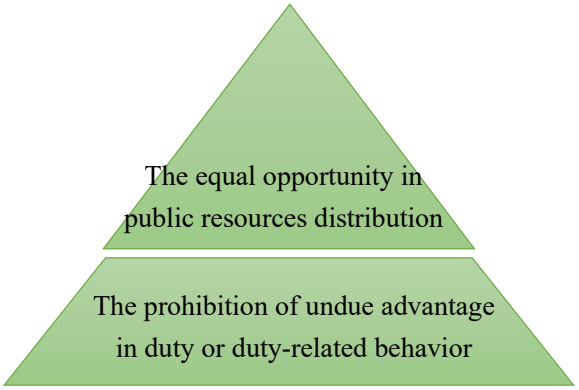

Figure 2. The hierarchical relationship between two types of legal interests.

Hypotheses testify

The constitutive elements of all crimes are constructed against one or more legal interests. Therefore, legal interest has become an important tool of criminal interpretation. In modern criminal law theory, the concept of legal interest not only has the methodological function of guiding the interpretation of constituent elements, but also is the basis for testing the legitimacy of crime and punishment provisions. In other words, clarifying the legal interests of bribery crime is not only helpful to the understanding and application of bribery crime system, but also of great significance to carry out academic reflection and even reconstruction on the research of bribery crime constitution, crime form and penalty theory.

The asymmetry of penalty between offering and accepting bribes

The double-layer relationship of legal interest in bribery provides a legitimate basis for the "asymmetric" governance structure of punishing

offering bribes and accepting bribes. The reason why legislators require that the interests sought by the bribery crime are “illegitimate interests” is that “illegitimate interests” are negative in the evaluation conclusion of distributive principle, which violates the concept of distributive justice. The legal interest infringed by the crime of offering bribes is “the equal opportunity in public resources distribution” but does not involve “the prohibition of undue advantage in duty or duty-related behavior”. Therefore, when the interests sought by offering bribes are legitimate interests, it does not violate ‘the equal opportunity in the distribution of public resources and does not punish the briber.

However, the constitutive elements of accepting bribes do not require ‘illegitimate interests’, precisely because the legal interests infringed by accepting bribes include not only the equal opportunity in the distribution of public resources, but also the prohibition of improper gains in duty or duty-related behavior. Therefore, even if the public officers seek legitimate interests for others, it will not affect the illegality of the crime of bribery. Legislators treat the constitutive elements of the crime of offering bribes differently from the crime of accepting bribes, requiring that the interests they seek are “illegitimate interests”, just show the consideration of “illegitimate interests” in distribution justice is “undeserved”

In the Criminal Code, the sentencing difference between the crime of offering bribes and the crime of accepting bribes also strongly proves that there are two legal interests protected by the crime of bribery. On the one hand, the prohibition of undue advantage in duty or duty-related behavior, and on the other hand, the equal opportunity in public resources distribution [16].

Interpretation of special bribery situations

The previous section demonstrates that it is logical to put the dual legal interest structure in the bribery crime system. Next, the paper would test whether the dual legal interest structure can provide sufficient explanatory power through some difficult problems in judicial practice.

“Afterwards bribery” refers to the situation that the perpetrator does not accept property subjectively when he carries out “profit-making behavior” for others, and the latter gives property to state functionaries out of gratitude. The negative theory holds that only accepting other people’s property afterwards is considered to constitute the crime of bribery, which is a typical objective imputation and a violation of human rights. According to the principle that liability and behavior exist at the same time, liability can only be the psychological attitude at the time of behavior. The existence of responsibility, as well as the form and content of responsibility, should be subject to the time of the act, not before or after the act. Therefore, if the State functionaries are neither affected by bribery nor have the intentional or subjective purpose of accepting bribes when seeking benefits for others, even if others give property to the State functionaries out of gratitude afterwards, it is difficult to be identified as “buying” or “trading”. Obviously, the conclusion of negation is not conducive to the strictness of criminal punishment of bribery. The legal interest connotation of “the prohibition of undue advantage in duty or duty-related behavior” only requires the perpetrator to realize that the property he receives belongs to the improper remuneration of duty or related behavior. It can be recognized as the crime of bribery, if the perpetrator receives the illegal interests related to “duty or duty-related behavior” under the control of the criminal’s intention of accepting bribes.

There is another kind of bribery, namely “emotional investment”, which is also difficult in judicial practice. The so-called “emotional investment” refers to the fact that the party who gives the property does not have specific entrustment matters, and the party who receives the property does not help it to make profits, that is, the simple situation of accepting bribes in advance. This kind of behavior is obviously different from the bribery behavior with specific entrusted matters. The traditional theory holds that when the actor seeks benefits for others, he does not accept the other

party's property, which should not be recognized as the crime of bribery. According to the double-layer legal interest structure of this paper, infringement of "the prohibition of undue advantage in duty or duty-related behavior" is also established to accept bribes, which is not limited to specific duty behavior. Therefore, once the acceptance or solicitation of property has established a valuable causal relationship with the position or duty-related behavior, whether the acceptance of property before, during or after the event should be recognized as bribery.

The standard of accomplished bribery and attempted bribery

There are different opinions on the theory as well as practice of the division standard between accomplished bribery crime and attempted bribery crime. What is the accomplished standard completely depending on the understanding of the protection of legal interests. As mentioned above, the legal interest (object) protected by the crime of bribery is not a single legal interest, but a compound legal interest. That is, the prohibition of undue advantage in duty or duty-related behavior and the equal opportunity of public resource distribution. This paper holds that we should start with the legal interest protected by bribery crime and discuss the standards of accomplished and attempted bribery in combination with the compound behavior mode of "profit seeking behavior" and "financial behavior". First, the interpretation of criminal law should respect the literal rules of legal norms and cannot directly exclude the literal meaning or go beyond the legal provisions to interpret criminal law. Therefore, the understanding of the accomplished bribery should not violate the basic consensus of the public. According to the general experience, the constitute act of bribery crime is a compound behavior model including "profit seeking behavior" and "money receiving behavior". Meanwhile, the typical bribery mode in judicial practice includes both. Most accomplished bribery crimes also have both "profit seeking behavior" and "money receiving behavior", but it cannot be deduced that the accomplished bribery crime must have the above two behaviors at the same time.

According to the general theory of criminal law, in principle, the time for the establishment of a succeeding accomplice requires (except for the continuous crime) after the commencement of the act and before the completion of the crime. There can be no success after the completion of the crime [17]. However, if the staff of other countries only participate in the act of "seeking profits for others", they cannot be recognized as an accomplice in the crime of bribery in any case. Therefore, the completion of the crime of bribery should be regarded as the act of "receiving money". When state functionaries accept bribes and do not further implement the act of "seeking profits for others", they should also be recognized as the completion of the crime of bribery. Secondly, "failure of crime" is regarded as the legal standard to distinguish between accomplished crime and attempted crime. According to the position of the result occurrence theory, "failure of crime" refers to the failure of the harmful result determined by the nature of the behavior and expected or indulged by the perpetrator. Therefore, whether passive bribery or bribery is in the form of asking for bribes, the accomplished standard is "receiving money".

Criminalization or decriminalization

In the previous chapters, through the doctrinal interpretation and systematic test in the general bribery crime, it has been demonstrated that the reason why healthcare informal payment is criminalized has sufficient legal legitimacy. Therefore, an unavoidable problem is now needed further discussion, that is, in many countries, such behavior is not regarded as a crime, usually only as a normal requirement of doctors' professional. In other words, healthcare informal payment is an act that "can be criminalized" rather than an act that "must be criminalized".

The essence of the problem is the boundary between criminalization and decriminalization of criminal legislation. The view of criminalization holds that

the current criminal law is an effective response to the needs of social governance on the premise of not violating the modesty of criminal law [18]. First, in the relationship between criminal law preposition and social governance, the criminalization viewpoint advocates that the prepositional posture of criminal law is the practical need of social governance, rather than the deliberate advance from criminal law practice. After the abolition of the reeducation through labor system, instead of enduring the potential risks such as insufficient public security punishment, poor effect, expanded power and lack of supervision, it is better to deal with it through the legislative way of "legally prescribed crime and punishment", improve the judicial power by putting the criminal law in front, and limit the police power by improving the judicial power. Moreover, criminalization further reveals that the pre- criminalization of criminal law is not to blur the boundary between criminal law, civil law and administrative law, but the need to tighten the criminal law network.

Based on the following facts that the Hungarian criminal law has been "severely cracking down on and severely punishing" corruption crimes, by making up for the vacancy of social governance through criminalization legislation, which can achieve the effect of tightening the criminal law network and expanding the criminal circle to a certain extent.

Secondly, on the relationship between criminal law preposition and criminal law modesty, the view of criminalization holds that there is no fundamental contradiction between criminal law preposition and criminal law modesty. According to the understanding of criminalization, the implementation of the modesty of criminal law mainly lies in reducing the amount of penalty and realizing light punishment, not decriminalization or non-punishment, let alone stopping criminalization. On the contrary, if criminal law does not participate in social governance in time and allows the expansion of administrative power, it would be close to the boundary of the independence of criminal law, which would really hurt the modesty of criminal law.

Corresponding to the rational expression of criminal law's early intervention in criminalization theory, decriminalization theory also fully demonstrates the modesty of criminal law. Firstly, the theory of decriminalization advocates the need for social governance, which does not mean that taking criminal law as a conventional means of social management and excessively intervening in social governance in the way of legislative expansion is an abuse of the function of criminal law.

Secondly, the early intervention of criminal law will weaken the enthusiasm of civil law and administrative law to participate in social governance. And make the "omnipotence of criminal law" and "severe punishment deterrence" rise. As long as there are social risks and the legislation has not yet tried to adjust civil and administrative means, the criminal law will be moved to the forefront of social governance, which will not only promote the thinking inertia of using criminal law to solve social problems, but also weaken the enthusiasm of other social governance means, lead to the degradation of the functions of other social dispute resolution mechanisms, and affect the healthy development of the country. Finally, the pre-use of lethal criminal law will lead to a direct connection between criminal law and social life. On the one hand, criminal law is reckless about expansion, and on the other hand, civil life is gradually disturbed by criminal law. The early intervention of criminal law will have the potential risk of hindering civil freedom.

On the relationship between criminal legislation and the modesty of criminal law, the criminalization theory believes that the problem should be solved through the active prevention of criminal law, while the decriminalization theory advocates that the value of modesty should be guarded as the bottom line of criminal law. In the contradiction and conflict between the two views, criminalization and decriminalization superficially belong to the confrontation between criminal law

actively moving forward or taking care of the latter. However, it should be realized that whether the backward position of the social governance system, it reflects the functional orientation of contemporary criminal law in the social governance system, that is, the attitude of criminal law in the social governance system. In this perspective, the discussion should not be limited to "whether the positive criminal law is better, or the conservative criminal law is better". But should focus on the whole social governance system and consider the function of criminal law. Therefore, the preposition of criminal law and the modesty of criminal law are only a form of debate, and the role arrangement and function division of criminal law in the national social governance system are the focus of discussion.

This paper holds that the modesty of criminal law should be considered from a dynamic perspective. Therefore, distinguishing between "reasonable criminalization" and "excess criminalization" of criminal legislation is developmental. To judge whether the expansion of criminal circles violates the modesty of criminal law. We should not only focus on whether the criminal circle has been expanded statically. But also focus on the changes of the whole criminal situation and measure whether the criminalization legislation is necessary and reasonable. For example, since the introduction of the epidemiological restrictions, attempts to get away with the regulations have been widely present in the domestic criminal sphere in Hungary. Even official doctors have begun to take part in these illegal activities. According to the news in December 2021, a doctor as well as her assistant and a beautician were interrogated by the police. The assistant uploaded customers' data to the healthcare system and issued the fake vaccination certificates to a total of 13 people, to some for a price as low as HUF 100,000. The customers did not even have to go to the doctor's office because the beautician took their appropriate IDs and dropped them off at the doctor's office along with the money. The doctor and her assistant are accused of 13 cases of criminal law is actively in the forefront of the social governance system, or criminal law is passively in counterfeiting medical documents and 7 cases of accepting bribes, while the beautician is accused of 9 cases of assisting the prime suspects, misusing medical documents and one case of bribery. Informal payment is not only a corrupt crime but also brings more social governance problems and more serious social harm. Although it belongs to the advanced intervention of criminal law statically, it helps to tighten the criminal law network dynamically and expresses the prohibited evaluation attitude of criminal law towards bribery crimes. Therefore, from a dynamic perspective, the expansion of such criminal circle is necessary and reasonable.

On the contrary, if a crime does not show a severe development trend and even does not belong to a criminal act worthy of prohibited evaluation in the criminal law in a substantive sense, the criminalization of it in the criminal law belongs to "excess criminalization". Taking the crime of refusing to pay labor remuneration in China's criminal law as an example, the act of refusing to pay labor remuneration belongs to civil disputes in essence. It includes many situations, such as reasonable refusal to pay and unreasonable refusal to pay, active payment but unable to pay, and passive avoidance of payment. Overall, the behavior of refusing to pay labor remuneration is more like a social phenomenon, which is difficult to be equal to crime in the substantive sense. In terms of legal relief, the settlement of such civil disputes should also be based on civil relief means. Therefore, the criminal law criminalizes the refusal to pay labor remuneration, which is suspected of "excess criminalization".

A feasible agenda for bribery crime

Whether criminal law actively intervenes in advance or adheres to the legal bottom line, the discussion of its representative criminal law function should be carried out in the framework of comprehensive social governance. Although in the current social background, two kinds of thinking of

criminal law pre-emption and criminal law modesty are needed to solve the problem, without the support get rid of the unstable state fundamentally. In other words, the path dependence on criminal law, especially criminal legislation, cannot be formed, and the comprehensive consideration of social governance system cannot be ignored.

In this regard, the state should actively undertake the necessary public management functions and form a multi-level and three-dimensional social governance complex, including moral and ethical evaluation, civil law and administrative law governance. By incorporating criminal law as the "bottom law" and other laws into the practice of comprehensive social governance, a scientific crime prevention complex and legal chain will be formed, to fundamentally reduce the burden and pressure for criminal law. In this way, the due function of criminal law in social governance will not be self-evident. Moreover, after the function of criminal law is optimally set, criminal law does not need to tangle with the problem of preposition or modesty.

Active bribery: how does criminal law guide public opinion?

In an era of attaching great importance to public opinion, whether from the legitimacy of legislation itself or from the national political level outside legislation, public opinion is no longer an extrajudicial factor passively avoided by criminal legislation, but a force that criminal legislation needs to face and accept actively. Especially in Hungary, which is in the period of social transformation, it is still of great positive significance to find social problems through public opinion and guide the trend of public opinion through legislation.

A survey carried out in 2010 in Hungary involving a representative sample of 1037 respondents. It has found three main different attitudes toward informal payments: accepting informal payments, doubting about informal payments and opposing informal payments. There are 311 people who accept informal payments (mostly young or elderly people, living in the capital), consider such payments as an expression of gratitude and perceive them as inevitable due to the low funding of the health care system. 316 people are doubtful about informal payments (mostly respondents outside the capital, with higher education and higher household income). They are not certain whether these payments are inevitable, perceive them as like corruption rather than gratitude, and would rather use private services to avoid these payments. The opposition to informal payments only has 297 people (mostly among men from small households and low-income households). And can be explained by their lower ability as well as lower willingness to pay.

A large share of Hungarian health care consumers has a rather positive attitude towards informal payments, perceiving them as "inevitable due to the low funding of the health care system". From a policy point of view, the change of this consumer attitude will be essential to deal with these payments in addition to other policy strategies. Specifically, we should weaken the legality of criminal law norms as well as strengthen the immorality of crime itself.

Public opinion is too sensitive to criminal legislative activities, which is also related to the over specialization of some criminal law norms and the lack of public recognition. For some statutory crimes in the Criminal Code, people regard these statutory crimes as true crimes because these acts violate relevant administrative laws and regulations. However, why does the Criminal Code include these acts in the criminal sanctions system? What is the social harmfulness behind these behaviors? People rarely form a relatively rational understanding and cognition of these problems, neither do they totally agree with the practice of criminalizing some behaviors which they think are only in violation of administrative order or professional ethics. Therefore, if we want to ease the tension between the professionalism of criminal law norms and the simple cognition of the public,

legislation needs to further emphasize the social harm behind statutory offenders and reduce citizens' an example, its criminality is not only given by the state, but determined by the legal interests it infringed, that is, its own social harmfulness. Therefore, the normative design of anti-corruption criminal law should not only pay attention to the technical and quantitative conviction and sentencing standards, but also weaken the legality of bribery crime, breaking the cognitive barrier between professional criminal law norms and the public, and making the criminal legislation of bribery crime obtain sufficient social recognition.

Passive bribery: exploration of public healthcare compliance system

The external supervision system can quickly realize the code of conduct for the regulated subject through the formulation of unified hard rules and the strong intervention of the supervision department. However, there are also obvious shortcomings, such as overemphasizing the unity of rules and ignoring individual differences. Moreover, external supervision often lags, and only after problems have already appeared could special rectification be carried out by mandatory means. The information asymmetry between the supervision department and the supervised subject has become a serious factor restricting external supervision. Therefore, by establishing the compliance system inside the institutions and strengthening their internal supervision ability, the pressure of external supervision could be internalized into daily behavior and the power of internal standardized operation. To realize systematic ness, continuity and real-time supervision.

The concept and practice of compliance management is still a new thing in the existing healthcare institutions. After all, there are many differences between public hospitals as public institutions and enterprises as business units. However, as the main body of national medical service, the goal of sustainable development and its social responsibility are consistent with state-owned moral and emotional tolerance for these statutory offenders. Taking the crime of informal payment as enterprises. Therefore, the introduction of the compliance management system of state-owned enterprises is of great significance to strengthen the internal supervision of medical institutions.

Specifically, healthcare institutions should identify compliance risks and key risk areas according to their own operation characteristics and functions of various departments, establish targeted compliance plans and codes of conduct, and design corresponding monitoring and investigation mechanisms.

By setting up a working system for risk identification, early warning, response, compliance review and illegal disposal, manage key posts, important links and important individuals, to ensure the healthy growth of the organization.

At the same time, healthcare institutions should strengthen the systematic management of internal compliance and closely connect with the superior departments to ensure the continuity and real-time supervision of major matters at all levels. It is also necessary to cooperate with external regulatory authorities (such as the National Defense Service) to eliminate the information asymmetry of internal and external supervision as far as possible, which is conducive to the connection of regulatory responsibilities and the evaluation of regulatory effects.

In addition, an incentive mechanism with both attraction and deterrence should be set as well. In terms of positive incentives, hospitals should take compliance as an important indicator of assessment, reward departments and individuals who have made outstanding performance in compliance construction. The discovery and identification of compliance risk depend on the efficient operation of investigation and reporting mechanism, therefore the "whistleblowing" plan that offers protection and reward to the individual who report violations of laws and regulations is also a good example to learn from. In terms of reverse incentive, whoever is responsible for

violations determined through compliance investigation should be treated equally and punished fairly in strict accordance with the compliance system.

Legislative and judicial evaluation: balancing governance benefits and costs

Governance benefit and economic cost respectively focus on the positive effect and the negative cost of law. Benefit and cost are the two sides of legal rationality. Although they are contradictory to some extent, if the governance benefit of criminal legislation could be combined with the economic cost of criminal law in an orderly manner, the conflict between them is likely to be alleviated and their positive functions are expected to be brought into play.

On the one hand, for the evaluation of criminalization of informal payment as well as other kinds of bribery, legislators should adhere to the evaluation method of paying equal attention to the positive effect and negative cost of legislation. Especially carefully considering the cost behind the criminalization legislation, which include law enforcement, judicial practice, prison management and human rights protection. Taking informal payment as an example. This year, from March 1st to late September, the National Defense Service has dealt with 23 cases of informal payment. The organization has carried out quite serious investigation to screen out informal payment behaviors. Their methods include wiretapping, bugging, bait investigation, intelligence surveillance, audio and video recording stuff such as camera goggles, a pen with a microphone and so on. Although it has achieved certain governance results since it was sentenced this year, it should be noted that these effects are obtained at the cost of low conviction threshold, severe punishment allocation and high-intensity law enforcement. Once the law enforcement intensity is weakened under the influence of time, space and extrajudicial factors, the actual effect of governance may face challenges. Therefore, the theoretical evaluation of the governance effect of informal payment crimes should not be too optimistic, and the future of bribery governance practice also needs further transformation and upgrading.

On the other hand, judiciary should explore diversified penalty measures to reduce the consumption of social governance resources by criminalization legislation as much as possible. It should be realized that if there is a change in criminalization, its consumption of social governance resources will be inevitable. Therefore, both theoretical researchers and legislators should shift their attention from crime theory to penalty theory. And try to minimize the potential cost of criminal governance through diversified penalties. For example, for minor offenders in bribery crimes, non-custodial penalties such as prohibition of employment and fines could be considered. This is not only a punishment measure, but also a way to help them return to society, to reduce the governance cost of potential corrupt crimes.

Conclusion

The normative protection purpose of bribery crime and even the whole bribery crime system can be attributed to the distribution justice of social public resources. Bribery crime affects the distribution of interests from two aspects: on the one hand, it involves the corrupt interests of the briber; On the other hand, it involves the improper benefits obtained by the briber. Correspondingly, the legal interests of bribery crime should include two levels. One is “the prohibition of undue advantage in duty or duty-related behavior” which linked to the desert principle, and another is “the equal opportunity in public resources distribution” which linked to the need principle. The bribery crime of simply accepting bribes and the bribery type of violating the equality of opportunity in the distribution of public resources are not antagonistic, but a kind of “rank” relationship. The type of bribery that violates the equality of opportunity in the distribution of public resources is based on the simple type of bribery, and the degree of illegality of the two is different.

The “double-layer legal interests” theory can reasonably solve many problems faced by the It can properly bring bribery without prior agreement and emotional investment bribery into the scope of punishment. The “double-layer legal interests” feature also determines that the crime and punishment allocation of bribery should not be limited to the amount of bribery but should be extended to the plot of “profit-making behavior”. The social harmfulness of bribery mainly depends on the plot of “profit-making behavior” for others, such as whether state functionaries violate their duties and the degree of violation of their duties.

However, the justification of criminalization does not necessarily lead to criminal legislation. A reasonable and necessary legislation depends on the change of the whole criminal situation and needs to be considered from a developmental perspective. Therefore, it is important to form a multi-level social governance complex, by using proper measures to guide public opinion, exploring healthcare compliance system, balancing governance benefits and cost in legislative and judicial evaluation.

Criminal law scholars pay more and more attention to the guiding function of the legal interests protection for the interpretation of constituent elements, but often ignore the fact that what the protection of legal interests of a specific crime is cannot be self-proved, it could only be interpreted Taking a certain view of legal interests as an unshakable premise of argument and carrying out deductive analysis on this basis, we may be able to draw an interpretation conclusion that ostensibly conforms to the logic of legal doctrine, but we cannot obtain new knowledge, let alone ensure that the corresponding conclusion is wise in criminal policy.

It is necessary for the interpreter to be based on reality, take the purpose of criminal policy as the guidance and reference, and look back and forth between the protection of legal interests and constituent elements. Only in this way can the interpreter maintain the necessary openness in the criminal law interpretation of bribery crime. And meet the purposeful requirements of criminal policy. interpretation of the constituent elements, and the goal of self-renewal of the criminal law system can be achieved through interpretation. However, this does not mean ignoring the requirements of legal doctrine itself or allowing the purposeful consideration of criminal policy to break through the logic of legal doctrine. Instead, we should pursue a criminal law interpretation that meets the integration requirements of legal doctrine and the goal setting of criminal policy at the same time, to ensure the coordination between the evaluation of legal doctrine as well as criminal policy. In any case, it is not advisable to explain the related problems of bribery with the help of simple conceptual deduction without reflection. On the issue of protecting the legal interests of bribery crime, it is necessary to get rid of the thinking inertia of either and explore a new theoretical path as much as possible.

Funding

This work was not supported by any funds.

Acknowledgements

The authors would like to show sincere thanks to those techniques who have contributed to this research.

Conflicts of Interest

The authors declare no conflict of interest.

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