

A Study on the Repeatable Evaluation and Application of Aggravating Circumstances for the Crime of offering bribes

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Abstract

Among the seven aggravating circumstances newly added by the Amendment (XII) to the Criminal Law of the People's Republic of China (hereinafter referred to as the * Amendment (XII) to the Criminal Law*), some overlap with the elements for establishing the Crime of offering bribes as defined in judicial interpretations; however, they may still be applied as elements for establishing the crime. The principle of prohibiting repeatable evaluation prohibits evaluating the same facts more than once based on the same criteria during both the conviction and sentencing phases. When elements for conviction overlap with aggravating circumstances, if the two evaluations serve different normative purposes, their concurrent application does not violate the principle against double evaluation; when multiple aggravating circumstances overlap, if they correspond to different facts or different aspects of the same fact, their concurrent application is justified; conversely, if multiple circumstances substantially serve the same normative protective purpose, they should be evaluated collectively to avoid double evaluation.

Keywords

crime of offering bribes; circumstances warranting aggravated punishment; repeatable evaluation; concurrence; rules of application

1 Introduction

In response to the central government's policy of "investigating both bribery and accepting bribes together," Amendment (XII) to the Criminal Law added seven new aggravating circumstances to the provisions on the crime of offering bribes, with the intent of strengthening the crackdown on bribery. However, the issue lies in the fact that this creates a certain degree of overlap with the elements for conviction and aggravating circumstances stipulated under the "amount + circumstances" model in the section on the crime of offering bribes in the *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Embezzlement and Bribery* (hereinafter referred to as the *Interpretation on Corruption and Bribery*), which was promulgated in 2016; this has also given rise to significant controversy in judicial application. Take, for example, a public official offering a bribe to secure a promotion. If the amount of the bribe exceeds 500,000 yuan but is less than 1 million yuan, according to the "Interpretation on Corruption and Bribery," the act should be treated as the crime of offering bribes,



and sentencing should fall within the second statutory sentencing range for “serious circumstances.” However, if the “Twelfth Amendment to the Criminal Law” is applied, this scenario falls under the aggravating circumstance of “bribery committed to seek promotion or adjustment of position or rank,” and sentencing should be within the first statutory sentencing range. In this case, applying the “aggravated sentencing” provisions of the “Interpretation on Corruption and Bribery” to the same facts again appears to violate the principle of prohibiting repeatable evaluation. How should this dilemma be resolved?

This article will examine the controversy surrounding the overlapping evaluation between the newly added aggravating circumstances for the crime of offering bribes and the elements for conviction under the “Interpretation on Corruption and Bribery.” By clarifying the concept and scope of application of the principle of prohibiting repeatable evaluation, it will provide guidance on the application of aggravating provisions and propose a clear and feasible set of application rules.

2 Circumstances of Repeatable Evaluation in Aggravating Circumstances for the Crime of offering bribes

2.1 Issues of Concurrence Regarding Aggravating Circumstances

2.1.1 Concurrence Between Elements Necessary for Conviction and Aggravating Circumstances

The “Interpretation on Corruption and Bribery” stipulates six scenarios in which acts of bribery involving amounts insufficient to constitute a crime shall nevertheless be criminalized. Five of these provisions overlap with the aggravating circumstances for the crime of offering bribes newly added by the “Amendment XII to the Criminal Law.” Specifically: “bribing three or more persons” corresponds to “bribing on multiple occasions or bribing multiple persons”; “bribing to secure a promotion or reassignment” corresponds to “bribing to secure a promotion or reassignment in position or rank”; “bribing state officials responsible for the supervision and management of food, pharmaceuticals, work safety, environmental protection, and other areas to carry out illegal activities” corresponds to “bribing in the fields of ecological environment, finance and banking, work safety, food and pharmaceuticals, disaster prevention and relief, social security, education, and healthcare to carry out illegal or criminal activities”; “bribing judicial personnel to influence judicial impartiality” corresponds to “bribing personnel in supervision, administrative law enforcement, or the judiciary,” while “using illicit gains to commit bribery” has been fully incorporated into criminal legislation. Under the former provisions, these circumstances were intended to serve as elements for establishing guilt, whereas under the latter provisions, they are to be applied during the sentencing phase for acts that meet the threshold for the crime of offering bribes. This creates confusion regarding the concurrent application of elements for establishing guilt and aggravating circumstances. When the amount of a bribe is 10,000 yuan or more but less than 30,000 yuan, and there are overlapping circumstances, should such circumstances be treated as elements for establishing guilt or as aggravating factors for sentencing? If the former, then criminal liability for the crime of offering bribes should be pursued in the above circumstances; if the latter, since the bribery does not meet the threshold for criminal liability, the aggravating factors would have no application.

First, following the inclusion of the aforementioned circumstances as independent aggravating factors in the “Amendment (XII) to the Criminal Law,” there are differing views in academic circles as to whether they can still be applied as elements for establishing guilt under the provisions of the “Interpretation on Corruption and Bribery.” The negative view holds that, since the “Interpretation on Corruption and Bribery” ranks lower in legal hierarchy than the “Amendment (XII) to the Criminal Law,” and to prevent duplicate evaluation, these circumstances in the former must be deemed to have automatically lost their effect as elements for establishing guilt [1]; the affirmative view argues that while the “Amendment (XII) to the Criminal Law” designates the seven circumstances as aggravating factors for sentencing, this does not preclude their use as general circumstances for establishing guilt in bribery offenses, as circumstances for establishing guilt and aggravating factors for sentencing are not inherently in conflict [2].

The author is more inclined to agree with the affirmative view. The negative view primarily takes the principle of legality in criminal law as its starting point, arguing that judicial interpretations cannot transcend the constraints of criminal legislation; therefore, once the “Amendment (XII) to the Criminal Law” stipulates the aforementioned circumstances as aggravating circumstances, they can no longer be applied as elements for conviction under the provisions of the “Interpretation on Corruption and Bribery.” In fact, however, even though criminal legislation has established these aggravating circumstances, this does not negate the rationality of their existence as elements for conviction. The framework established by the “Interpretation on Bribery and Embezzlement”—which incorporates certain circumstances into the assessment of criminal liability—was subsequently codified by the “Amendment (XII) to the Criminal Law.” This essentially constitutes a reasonable affirmation of that interpretation and does not represent a new normative logic.

On one hand, although the elements of the crimes of bribery (both giving and receiving) and embezzlement are primarily based on monetary amounts, there is a fundamental difference in the nature of the former compared to the latter. Although the law classifies embezzlement as a crime of official misconduct, in practice it is still treated as a property crime; the protection of property interests plays an absolutely dominant role in the determination of embezzlement, while the principle of integrity remains relatively secondary. The nature of the crime of embezzlement has shifted from property infringement to dereliction of duty; although it is positioned within the legal system at a distance from property crimes, the fact that embezzlement infringes upon the ownership of public property remains unchanged [3]. Therefore, using the amount involved as the standard for conviction and sentencing is entirely justified. However, the legal interest infringed upon by bribery crimes is not the ownership of public property. The current Criminal Law’s penalty system for bribery offenses places excessive emphasis on the transaction value, thereby obscuring the essential nature of dereliction-of-duty offenses [4]. Regardless of whether academic circles define the protected legal interest in the crime of offering bribes as the integrity of state officials or their incorruptibility, it is not regarded as a property crime. If the severity of punishment is determined solely based on the value of the bribe, this clearly focuses only on the property-related nature of the consideration paid for non-negotiable public power, while failing to address other dimensions of the social harm and personal danger posed by the act of bribery, resulting in an incomplete assessment of criminal punishment [5]. The severity of the harm caused by bribery offenses is not determined purely by the amount of the bribe; a fair determination

can only be made by making a value judgment on the facts of the crime. The “Amendment XII to the Criminal Law” designates these seven categories of circumstances as newly added aggravating factors precisely out of this consideration.

Although the first sentencing range for the crime of offering bribes does not specify requirements regarding the amount or circumstances, the conditions for applying the second and third sentencing ranges are “serious circumstances” and “particularly serious circumstances,” respectively; therefore, the conditions for applying the first sentencing range can naturally be understood to refer to “relatively serious circumstances” and “general circumstances.” Therefore, even though Paragraph 2 specifies seven categories of aggravating circumstances, it cannot be construed as negating the existence of elements necessary for conviction; at the very least, these circumstances can be regarded as both elements necessary for conviction and factors for sentencing. Otherwise, this would lead to a tendency to focus solely on the “amount” in the elements of the crime of offering bribes.

On the another hand, denying the validity of these factors as elements of the offense would run counter to the legislative intent of the “Amendment XII to the Criminal Law” to strengthen penalties for the crime of offering bribes. If the aforementioned factors can only serve as aggravating circumstances, it would mean that acts for which criminal liability was previously imposed under judicial interpretations—even when the amount of the bribe did not meet the threshold for criminal liability—would now all be treated as non-criminal, which would significantly narrow the scope of criminal liability, reduce the severity of punishment for bribery, and raise the threshold for criminal liability—undoubtedly running counter to the Central Government’s call to “investigate both bribery and bribe-taking together.” Therefore, in addition to serving as aggravating factors for sentencing, these five sentencing factors should continue to function as elements constituting the crime.

Second, regarding whether the same circumstance can be applied simultaneously as both a basis for conviction and a factor in sentencing, the academic community generally holds a negative view. For example, some scholars argue that the basis for conviction and sentencing factors serve distinct functions. As an important manifestation of the principle of prohibiting repeatable evaluation, the basis for conviction must not be reused during sentencing [6]. The principle of prohibiting repeatable evaluation dictates that a particular circumstance cannot first be used as a condition for conviction and then treated as a sentencing factor [7]. However, some scholars have pointed out that if a statutory circumstance can serve as both a factor for conviction and a sentencing factor, its nature must be determined based on the specific context. For example, some scholars argue that the circumstance of “bribing multiple times or bribing multiple persons” presents a special case: if the perpetrator bribes three or more persons on three or more occasions, with the total amount of bribes less than 30,000 yuan and no other criminal circumstances, then this circumstance can be split into “bribing three or more persons” and “bribing multiple times,” with the former serving as a conviction element and the latter as a sentencing element warranting a harsher punishment for the perpetrator. [8] Since scholarly opinions are divided, it is necessary to provide guidance on the application of the concurrence of conviction and sentencing elements by examining the scope and implications of the principle of prohibiting repeatable evaluation.

2.1.2 Concurrence Among Different Aggravating Circumstances

There is also the issue of concurrent application of different aggravating circumstances. For example, if a state official commits bribery to secure a promotion and the amount involved meets the threshold for criminal liability, two aggravating circumstances coexist: “bribery by a state official” and “bribery to secure a promotion or adjustment in position or rank.” Whether both sentencing factors should be applied simultaneously or only one should be selected remains a subject of significant controversy in judicial practice.

Academic circles hold divergent views on how to address the concurrence of aggravating circumstances: The first view holds that imposing duplicate penalties for two aggravating circumstances is unreasonable and that they should be treated as a single aggravating circumstance. Legislators from the Legislative Affairs Commission of the National People’s Congress have similarly stated that when aggravating circumstances overlap—such as when a state official bribes to seek a promotion—they should be treated as a single aggravating circumstance [9]. The second view argues that if, in the same case, two facts are mutually independent, considering them as two aggravating circumstances does not constitute double counting [10]. Other scholars further point out that one should examine whether the overlapping circumstances point to facts of the same nature; for those that are qualitatively different statutory scenarios, even if multiple aggravating circumstances overlap, they must be determined separately [11]. The third view argues that, regarding the concurrence of sentencing circumstances that have the same effect, the rules for handling concurrence of crimes should be applied—namely, “punishment based on the more severe offense.” Since status and criminal motive are circumstances of different natures—reflecting personal dangerousness and subjective malice, respectively—they should be evaluated comprehensively. Furthermore, the rules for handling concurrence in both conviction and sentencing should remain consistent; the concurrence of circumstances with the same effect must reflect a stance of aggravated punishment [12].

Differences in academic views regarding whether various aggravating circumstances can be applied simultaneously stem from differing interpretations of the scope of the principle of prohibiting repeatable evaluation. The first view holds that the principle of prohibiting repeatable evaluation applies to facts sharing the same social attributes, rather than facts with different legal attributes. When multiple aggravating circumstances focus on the same fact, only one may be applied. While this view upholds legal stability, it fails to consider whether a single fact may have different evaluative aspects at the legal level, which can easily lead to insufficient evaluation. The second view interprets the principle of prohibiting repeatable evaluation from the perspective of protecting legal interests. It holds that a fact sharing the same social attributes may involve facts with different legal attributes in a case, requiring separation through value judgments and evaluation by simultaneously applying different aggravating circumstances. The third perspective is relatively novel; while it does not deny the rationality of simultaneously applying multiple aggravating circumstances, it emphasizes that, in terms of handling, competing aggravating circumstances should be evaluated by analogy with the rules governing concurrent offenses. However, the rationale for this analogical application remains insufficiently substantiated.

The application of the principle of prohibiting repeatable evaluation is by no means a purely doctrinal issue, but rather a projection of criminal law’s value orientation into specific rules [13]. Clarifying the es-



sence of principle of prohibiting repeatable evaluation—and thereby correctly guiding the application of aggravating circumstances in bribery offenses—has become an urgent issue that must be addressed.

2.2 Clarifying the Connotation of the Principle of Prohibiting Repeatable Evaluation

The principle of prohibiting repeatable evaluation is rooted in the justice of criminal law, with a focus on ensuring proportionality between crime and punishment and protecting the legitimate rights and interests of the defendant. However, for a long time, the understanding of this principle has tended toward formalism, simplistically equating it with the prohibition against using the same facts twice in both conviction and sentencing. This formalistic understanding fails to address the essence of the issue and does not provide effective guidance for the complex application of aggravating circumstances in bribery offenses [14].

At the conviction stage, the principle of prohibiting repeatable evaluation manifests in the prohibition against evaluating the same facts as multiple elements of a crime simultaneously. For example, in the case of a single act constituting multiple offenses (imaginary concurrence), although the perpetrator's conduct—arising from several distinct acts of culpability—produces different harmful consequences, there is only one factual act of the crime from start to finish; this constitutes a single offense in substance and cannot be evaluated as multiple offenses. The issue of repeatable evaluation at the sentencing stage, however, remains a hot topic of academic debate. Some scholars argue that applying certain elements of the conviction as sentencing factors at the sentencing stage violates the principle of prohibiting repeatable evaluation. The author believes this view is overly absolute. To determine whether elements of the conviction can serve as sentencing factors, one must examine both the basis for conviction and the grounds for sentencing. The prevailing view in Chinese criminal law scholarship holds that the basis for conviction should be the significant social harmfulness inherent in the conduct. In addition to the social harmfulness of the act, sentencing is also based on the personal dangerousness reflected in the perpetrator. Clearly, a fact reflecting the social harmfulness of the act influences both conviction and sentencing. In China's "qualitative plus quantitative" system of criminal composition, numerous legislative examples, judicial interpretations, and specific cases demonstrate that facts such as the amount involved and aggravating circumstances are significant not only for conviction but also for sentencing. If the two were to be strictly separated, it would not only be difficult to explain from a theoretical perspective but also difficult to implement in judicial practice, because the same fact plays an important role in both conviction and sentencing under different conditions, and the elements of many offenses are highly complex, which makes it even more difficult to implement this principle.

The author believes that evaluating the same facts simultaneously as both elements for conviction and sentencing is not a true "repeatable evaluation," nor is it an exception to this principle; rather, it is a non-duplicative evaluation of different aspects of the same facts (or, in other words, an evaluation of the same facts based on different attributes). For example, if the level of violence committed by a perpetrator during a robbery is sufficient not only to suppress the victim's resistance but also to pose an imminent danger to the victim's life, then at the conviction stage, the violent means should be evaluated as a fact constituting the elements of the crime of robbery; furthermore, during the sentencing process, the severity of the violence may also be evaluated as an aggravating circumstance warranting an increased statutory penalty. This practice of evaluating the same facts or circumstances under different legal attributes for different purposes may, at

first glance, appear to constitute a problem of repeatable evaluation; however, in reality, it is not repeatable evaluation. On the contrary, even the same factual conduct may embody multi-tiered legal interests, and these elements can be separately identified and applied at different stages of evaluation [15]. Therefore, the principle of prohibiting repeatable evaluation should mean that the same facts must not be evaluated more than twice under the same legal attribute during the stages of conviction and sentencing.

In judicial practice, the “crime weight” of a criminal act is filtered through the two stages of conviction and sentencing. First, if the extent of the infringement on legal interests meets the threshold for criminal liability, then during the conviction stage, the “crime weight” of the act is used to satisfy the elements required for conviction; the remaining “crime weight” is then applied to sentencing factors, including the application of circumstances warranting an increased statutory penalty. The same applies to the crime of offering bribes: aggravating circumstances may be used during the conviction stage to make up for any shortfall in the criminal weight caused by an insufficient bribe amount, and after conviction, they may be used during the sentencing stage to adjust the severity of the punishment. Therefore, once the evaluation has determined that the offense exceeds the threshold for conviction, these circumstances reflect a deeper level of violation of the law. These two evaluations serve different normative purposes and target different levels of assessment; consequently, they do not constitute a double counting of the same unlawful conduct. This understanding not only avoids the undue suppression of individualized sentencing caused by a formalistic approach but also maintains the rigor of criminal law evaluation through the separation of attributes and functions, thereby providing a legitimate basis for the functional transformation of aggravating circumstances in the crime of offering bribes.

3 Rules for the Application of Aggravating Circumstances in the Crime of offering bribes

Having clarified the rationality of distinguishing between aggravating circumstances and elements of the offense, as well as the concurrent application of aggravating circumstances, we must now analyze the legitimate basis for these aggravating circumstances and, guided by the principle of prohibiting repeatable evaluation, derive specific rules for their concurrent application.

3.1 Analysis of the Concepts of Unlawfulness and Criminal Liability in Aggravating Circumstances

First, there are several points that need clarification regarding the circumstance of “repeated bribery or bribery of multiple individuals.” On the one hand, it is generally believed that repeatedly committing illegal or criminal acts reflects a high level of personal danger posed by the perpetrator—that is, a strongly antisocial personality who remains unrepentant even after facing legal consequences and bearing corresponding responsibility [16]. While giving bribery certainly undermines the incorruptibility of public officials’ duties, the terms “repeatedly” and “to multiple individuals” in this aggravating circumstance further emphasize the briber’s extreme personal danger and subjective malice in disregarding the work discipline of state organs and attempting to continuously corrupt the integrity of public officials. On the other hand, although criminal



legislation advocates for strict punishment of bribery crimes, in accordance with China's criminal policy of temper justice with mercy, aggravating circumstances should be interpreted narrowly, the term "on multiple occasions" here emphasizes the independence of time, recipients, and matters [17]; it is necessary to examine whether there is a factual connection between the perpetrator's multiple acts of bribery. Where bribes are given to the same person multiple times based on the same factual basis, such acts should be regarded as a single act of bribery in a continuous state and should be counted as a single instance.

Second, regarding why "bribery by a state official" is treated as an aggravating circumstance, some scholars argue that the key lies in the fact that state officials, due to their special status, possess a stronger awareness of violating norms; by exploiting the conveniences of their official positions to engage in "corrupt conduct," they demonstrate greater subjective malice and the necessity for special prevention. However, the author disagrees. If one were to argue that public officials, by virtue of their status, are subject to a higher expectation of not violating criminal law, then their status as public officials should constitute an aggravating circumstance for all criminal offenses—yet this is not the case. The actual reason is that their status makes it more likely that legal interests will be infringed upon. In most cases, the likelihood of obtaining a benefit in exchange for a bribe is greater for public officials than for non-public officials. A common scenario involves leaders of administrative units at the same level bribing one another to secure conveniences beyond their official authority, generally driven by social courtesies and considerations of career advancement; the recipient often accepts the bribe and makes a promise—or even fulfills the bribe's intended purpose—in the hope that the briber will secure corresponding improper benefits for them in the future.

Third is "bribery in national key engineering projects and major projects." First, the definition of "national key engineering projects and major projects" is relatively vague. Some scholars believe that it can be determined by referring to the list of key projects released annually by the National Development and Reform Commission (NDRC), and therefore equate it with key projects identified by the NDRC; while others argue that "national key projects and major initiatives" are not limited to these; projects of equivalent significance to those listed by the NDRC may also fall under this category. The specific level of significance should be determined through a comprehensive assessment of factors such as the project's value, its importance to people's livelihoods, and its international influence [18]. However, this interpretation further complicates the already ambiguous legal definition. Some scholars, on the other hand, propose a clearer standard, arguing that the scope should be defined in conjunction with the list of 102 national-level key engineering projects published by the NDRC under the 14th Five-Year Plan [19]. However, the author believes that limiting the scope of criminal law provisions to the scope of documents from a specific phase will gradually amplify the inherent limitations of the law. As we are now in the 15th Five-Year Plan period, the content of corresponding national-level key engineering projects will inevitably change. If we insist on using past lists as the standard at that time, it could result in criminal law provisions becoming obsolete; thus, this approach is unreasonable. The author believes that the scope should not be specifically defined in terms of which engineering projects or initiatives are covered. Instead, relevant authorities (such as the Supreme People's Court, the Supreme People's Procuratorate, and the National Development and Reform Commission) could jointly issue judicial interpretations to clarify the criteria for "national key engineering projects and major projects" by listing specific indicators, thereby ensuring the regulatory function of the provisions remains effective for a longer period.

Next, regarding the basis for aggravated punishment, a head of the Case Supervision and Management Office of the Central Commission for Discipline Inspection and the National Supervisory Commission explained to a reporter in the **People's Daily**: “Such acts of bribery not only disrupt the normal market economic order and directly cause massive economic losses to the state, but also endanger national economic security and affect the overall work of the Party and the state; they must be resolutely investigated and dealt with.” [20] ” The fundamental reason for imposing harsher penalties on this type of bribery lies in the real risk that it “causes major losses to public property, the interests of the state, and the people.” Although the legal interests directly protected by the crime of offering bribes are not identical to public property, the interests of the state, and the interests of the people, the Criminal Law, by prohibiting the buying of state officials’ official powers, aims to ensure that state authority is exercised in accordance with the law and regulations, thereby indirectly safeguarding public property, the interests of the state, and the interests of the people. Under normal circumstances, the risk of indirect harm to legal interests resulting from bribery is relatively minor; therefore, in principle, potential harm to such indirect legal interests is not taken into account when sentencing for the crime of offering bribes. However, once the bribery occurs “in the context of key national projects or major initiatives,” the risk of harm to indirect legal interests resulting from the corruption of a state official’s relevant powers increases significantly, and the danger becomes more concrete and urgent; therefore, this can be considered an aggravating circumstance for the crime of offering bribes.

Finally, in judicial practice, this circumstance is generally recognized as bribery committed during the implementation of key national projects or major initiatives. Does this circumstance also cover cases where bribes are offered to gain access to or secure contracts for such projects? The author believes that such cases should be included within this category. This is because, when viewed as a whole, the process of participating in the bidding, obtaining qualifications, and engaging in construction constitutes a continuous, interlinked, and complete sequence of events. Bribery committed at any stage of this process undermines the originally fair and impartial bidding environment, thereby causing significant damage to the incorruptibility of public office, the public interest, and the public’s trust in government officials. The crime of bid-rigging, as defined in the Criminal Law, further confirms that the bidding phase—prior to the formal implementation of a project or construction project—is a high-risk period for bribery offenses. If bribery acts during this phase are overlooked, the legal net cannot be tightened, which runs counter to the policy of strengthening penalties for bribery.

Fourth is “bribery to secure a position, promotion, or reassignment.” On the one hand, such conduct infringes not only upon the incorruptibility of public officials’ duties but also upon the opportunities of other citizens to obtain social resources reasonably and fairly through legitimate means. Furthermore, the author believes that bribe-givers seeking promotion, once they achieve their goal, may commit bribery again due to their increased power; their violation of norms exhibits greater stability and persistence, and therefore, imposing harsher penalties is justified. On the other hand, if a bribe is given because of practical circumstances (such as a spouse living in a different location) that necessitate a transfer to a position in another region, or if it is given to secure a job reassignment due to physical or mental health reasons, such cases should not fall within the scope of this provision. This is because the basic elements of the crime of offering bribes require that the perpetrator offer a bribe to “secure an improper benefit,” whereas in the former scenario, the



state official is not seeking substantive illegal benefits for themselves (such as an unfair promotion), but merely seeking to perform their duties normally under more suitable conditions. If the bribe is given solely to facilitate the state official's normal performance of duties, it does not fall within the scope of punishment for the crime of offering bribes [21] ; therefore, such circumstances do not constitute aggravating factors for the crime of offering bribes.

Fifth is "bribery in fields such as ecological environment, finance and banking, work safety, food and drug safety, disaster prevention and relief, social security, education, and healthcare, for the purpose of carrying out illegal or criminal activities." Such bribery not only infringes upon the incorruptibility of public officials' duties but also poses the potential for indirect harm to the public interest in areas such as the ecological environment and finance and banking.

The focal point of academic debate is how to define "carrying out illegal or criminal activities." Some scholars argue that "carrying out illegal or criminal activities" refers specifically to the briber's purpose in offering the bribe—that is, the specific request the briber intends to have fulfilled, such as for the purpose of producing or selling counterfeit or substandard products. However, the author believes that all acts of bribery committed for the purpose of carrying out illegal or criminal activities merely satisfy the basic element of "seeking improper benefits." If this element of the crime is re-evaluated as a sentencing factor, it clearly violates the principle of prohibiting repeatable evaluation. The key lies in the fact that it is only when such bribery actually leads a public official to abuse their official position to condone the bribe-giver's commission of such acts that the possibility of harm to the public interest in the aforementioned sectors arises.

Sixth, the act of "bribing personnel engaged in supervision, administrative law enforcement, or judicial affairs" not only infringes upon the fundamental legal interests protected by the crime of offering bribes but also further undermines the public's trust in the fairness of the systems governing supervision, administration, and the judiciary. This trust serves as the sociopsychological foundation for the effectiveness of legal norms; its erosion signifies a decline in public confidence in the state's governance capabilities, thereby significantly increasing the reprehensibility of the act. Some scholars argue that for this aggravating circumstance to apply, it is sufficient for the recipient of the bribe to hold one of the aforementioned positions; in other words, the mere existence of a threat to the legal interests protected by this offense is sufficient. The author does not agree with this view; such bribery acts must substantively result in officials in the aforementioned fields abusing their authority to fulfill the bribe-giver's requests within their respective spheres before the conditions for applying this aggravating circumstance are met.

Seventh, the meaning of "using illicit gains for bribery" is also controversial in academic circles. Some scholars argue that as long as the funds used by the bribe-giver for bribery are illicit gains—regardless of the nature of those gains—the conditions for applying this aggravating circumstance are met; whereas the majority of scholars maintain that it should be understood as the illicit gains obtained by the bribe-giver as a result of the bribe-taker's unlawful performance of official duties [22] . For example, if a bribe-giver uses proceeds from the illegal production of counterfeit or substandard products—which were made possible by a government official's abuse of power to turn a blind eye to such activities—to bribe that official, these funds become "double improper compensation" for the unjust official act. The bribe-taker and the bribe-giv-

er form a community of unlawful interests, which inevitably leads to further bribery acts; therefore, treating this as an aggravating circumstance is justified[23]. The author concurs with the second viewpoint presented at, namely that the “illegal proceeds” in this context should refer to the illegal benefits obtained by the bribe-giver through the public official’s prior abuse of power and regulatory violations. Since the harm caused to property by illegal proceeds does not fall within the scope of legal interests protected by the crime of offering bribes, yet can constitute an aggravating circumstance for that crime, the “illegal proceeds” here must have a legally significant connection to the public official’s act of accepting bribes. The sequence of criminal facts—“the bribe-giver offers a bribe—the bribe-taker uses their official position to enable the bribe-giver to obtain illegal gains—the bribe-giver uses the illegal gains to offer a bribe”—forms a complete logical loop. This demonstrates that the bribe-giver and the bribe-taker have formed a relatively stable corrupt alliance, which simultaneously infringes upon the incorruptibility of public officials and the public’s trust in them. therefore, the establishment of this aggravating circumstance is justified.

3.2 Rules for Applying Concurrent Aggravating Circumstances

3.2.1 Rules for the Application of Concurrence Between Circumstances for Conviction and Circumstances Warranting Aggravated Punishment

The preceding discussion has affirmed the rationality of continuing to apply the provisions added by the “Amendment XII to the Criminal Law” regarding aggravating circumstances for the crime of offering bribes—which overlap with the elements for conviction specified in the “Interpretation on Corruption and Bribery”—as elements for conviction. Therefore, when such overlap occurs and there are no other elements for conviction beyond these two, they should be given priority as elements for conviction. Since conviction serves as the foundation for sentencing, only after the severity of the criminal circumstances meets the threshold for conviction can the issue of how the remaining sentencing margin should be applied be discussed.

Taking the circumstance of “bribing on multiple occasions or bribing multiple persons” as an example, at the time of conviction, the total amount involved in the bribe-giver’s repeated bribes or bribes to multiple recipients has already been calculated as a sentencing factor, and the corresponding statutory sentencing range has been determined based on the cumulative amount. Whether it is still possible to impose a stricter sentence within the statutory sentencing range based on the factors of “repeated bribes” or “bribes to multiple recipients” has become an urgent issue requiring resolution. Some scholars argue that doing so risks repeatable evaluation, because “multiple instances of bribery” or “bribing multiple individuals” are linked to the total amount of the crime through cumulative calculation. As sentencing factors within the elements of the offense, the process of evaluating the total amount of the crime has already taken into account “multiple instances of bribery” or “bribing multiple individuals”; treating them as aggravating factors would therefore contradict legal principles [24]. The author believes this is not the case; not only are the amount of the crime and the circumstance of “multiple acts of bribery” unrelated, but the content assessed by each is entirely different. The cumulative amount of the crime assesses the briber’s infringement upon the legal interest of the public official’s incorruptibility in the performance of official duties, whereas the briber’s

“multiple” acts of bribery or bribery “to multiple persons,” indicates the perpetrator’s subjective malice in repeatedly using bribery as a common means to obtain improper benefits. If left unregulated by criminal law, the perpetrator poses a high risk to society and is highly likely to reoffend; therefore, imposing a heavier penalty is justified from the perspectives of both general and special prevention. Although bribing on multiple occasions or bribing multiple individuals results in the accumulation of amounts, the two aggravating factors evaluate different normative purposes and value attributes of the same factual situation; as mentioned earlier, this does not violate the principle of prohibiting repeatable evaluation.

3.2.2 Rules for Applying Concurrence of Aggravating Circumstances

When multiple aggravating circumstances coexist, the standard for determining whether there is duplicate evaluation should shift from the formal number of circumstances to whether the substantive elements of unlawfulness and culpability are independent.

In determining whether multiple aggravating circumstances can be applied cumulatively, the key lies in examining whether each circumstance targets a distinct type of legal interest. If several circumstances correspond to different facts or different evaluative aspects of the same fact, parallel evaluation is justified; conversely, if multiple circumstances essentially serve the same normative protective purpose, they should be evaluated collectively to avoid double evaluation.

In specific cases, when the aggravating factors each carry distinct connotations of unlawfulness and culpability, they may be applied in parallel. For example, while “bribery by a government official” and “bribery to secure a promotion” may be linked within the same set of facts, the former emphasizes the harm caused to the public’s trust arising from the official’s status, whereas the latter highlights the disruptive effect of the bribery act on the personnel system. Since the normative purposes of each are distinct, a parallel assessment does not constitute a duplicate evaluation. However, when multiple circumstances point to the same unlawful conduct and criminal liability, even if they are listed separately in the legislation, they must be applied jointly through a restrictive interpretation. For example, a bribe-giver who “gives bribes on multiple occasions” “to secure a promotion” may, on the surface, appear to involve two parallel and non-contradictory circumstances; however, in reality, there is a connection between the purpose and the means. The author believes that in such cases, the rules for determining the number of offenses in cases of connected offenses should be applied, and only one should be selected for adjudication.

Furthermore, the independence of the types of legal interests is also an important basis for judgment. Taking the field of ecological and environmental protection as an example, when a bribe-giver bribes an administrative law enforcement officer, ecological and environmental protection involves an abstract danger to the fundamental rights of an unspecified majority of people, whereas bribing an administrative law enforcement officer undermines the incorruptibility of public officials’ duties. Since the legal interests at stake are different, both provisions may be applied simultaneously in such cases.

4 Conclusions

The integrity and self-discipline of state officials depend not only on their intrinsic political awareness and moral consciousness but also on the deterrent effect and warning of the legal bottom line provided by criminal law, which are essential to resisting long-term and covert attempts to co-opt them for personal gain. The amendments to the bribery provisions in the “Amendment (XII) to the Criminal Law” certainly help promote the concurrent investigation and prosecution of both bribery and accepting bribes. However, the seven newly added aggravating circumstances for punishment overlap significantly with the standards for conviction and sentencing in existing judicial interpretations. This has made the long-neglected issue of duplicate evaluation of aggravating provisions in the field of embezzlement and bribery crimes increasingly prominent. To effectively resolve this judicial dilemma, it is necessary to thoroughly understand the unlawful implications and criminal liability underlying each aggravating circumstance, while ensuring their correct application under the guidance of the principle of prohibiting repeatable evaluation. While strictly punishing embezzlement and bribery crimes in accordance with the law, criminal law should also strike a balance between punishing crime and safeguarding human rights, and continue to advance the fight against corruption based on the rule of law.

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