

Interpretation of the Norms of Criminal Jurisdiction Objects under the Hong Kong National Security Law

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ABSTRACT

The Hong Kong National Security Law specifies the specific targets of sanctions, and the legislative content of the law on criminal jurisdiction objects clarifies the scope of behaviors protected and prohibited by law. Chapter 3 of the Hong Kong National Security Law specifies four types of crimes that endanger national security, including the crimes of secession, subversion of state power, terrorist activities, and collusion with foreign or overseas forces to endanger national security. From the perspective of legal interpretation, by grasping the dual elements of criminal intent and criminal behavior, the specific composition of the criminal jurisdiction objects stipulated in the law is clarified, revealing the particularity and strictness of the Hong Kong National Security Law in safeguarding national security. The normative interpretation of the specific criminal jurisdiction objects of this law can clearly stipulate the constituent elements of specific criminal acts, provide strong guidance for the effective jurisdiction of crimes that endanger national security in the Hong Kong Special Administrative Region, strengthen the prevention and crackdown on acts that endanger national security, and effectively safeguard national sovereignty, security, and development interests.

KEYWORDS

Hong Kong National Security Law; Scope of the Case; Criminal Intent; Criminal Act.

1. INTRODUCTION

The criminal cases involving specific crimes as the basic category of the subject of criminal jurisdiction need to clarify which behaviors should be included in the scope of criminal jurisdiction. The scope of the case is one of the criteria for determining the tightness of the criminal law network. The Hong Kong National Security Law is not an abstract norm for safeguarding national security, but rather specifies the specific targets of sanctions. The four types of acts stipulated in this law that infringe upon legal interests all cover national security. In Chapter 3 "Crimes and Punishments", each of the four sections corresponds to a type of crime, namely the crime of secession in Section 1, which includes Articles 20 and 21; The crime of subverting state power in the second section includes two articles, Article 22 and Article 23; The third section of the crime of terrorist activities includes five articles: Article 24, Article 25, Article 26, Article 27, and Article 28; The crime of colluding with foreign or foreign forces to endanger national security in Section 4 includes two articles, Article 29 and Article 30. The law stipulates that the constituent elements of a crime have a special aspect. The common law expression of "constituting a crime" clarifies the essential elements that require the perpetrator to bear criminal responsibility: criminal intent and criminal behavior. The former is the subjective constituent element of the establishment of a crime, while the latter is the specific manifestation of the crime. The normative analysis of the crimes stipulated in this law requires an analysis of the constituent elements such as intent and behavior involved in each crime from the

perspective of criminal law doctrine. From the perspective of legal interpretation, a segmented analysis of the different criminal acts under the criminal jurisdiction of this law can provide clear legal support for the effective jurisdiction of such criminal acts and strengthen the prevention and crackdown on crimes that endanger national security.

2. CRIME OF SECESSION

Article 20 of the Hong Kong National Security Law stipulates that "any person who... intends to split the country or undermine national unity shall be guilty of a crime." Article 21 of the Hong Kong National Security Law stipulates that "any person who incites, assists, instigates, or finances others with money or other property to commit the crimes stipulated in Article 20 of this Law shall be guilty of a crime." The former refers to the crime of splitting the country constituted by the act of implementation, while the latter refers to the crime of splitting the country constituted by auxiliary acts. The legal interests infringed by this crime are national unity and territorial integrity.

2.1. Intentional Elements

Splitting the country and undermining national unity are the elements of intent that constitute the crime of secession, emphasizing the subjective intent and purpose of the perpetrator. And the parallel relationship between "splitting the country" and "destroying national unity" is precisely defined by the legislative technique of using dots to separate them. The subjective state of this crime is constituted by intention and cannot be constituted by negligence. The perpetrator is aware that their actions will or may lead to territorial separation, change of local legal status, infringement of national sovereignty and independence, and actively pursues the occurrence of such consequences. In addition, the crime of secession constituted by the implementation of the act belongs to the category of behavioral crimes in nature. However, it should be distinguished that the crime of secession, which is constituted by auxiliary acts, is mostly constituted by direct intent, and it cannot be ruled out that the auxiliary actors may have indirect intent in allowing the harmful consequences to occur. Generally speaking, this is a form of 'knowingly committing a crime', which reflects the expected or specific views of the behavioral subject on the objective effects of their behavior. Therefore, the perpetrator does not subjectively have the criminal purpose of splitting the country and cannot be identified as this crime.

2.2. Behavioral Elements

The crime of secession is a behavioral offense, which means that any act prohibited by the Hong Kong National Security Law constitutes a crime, without considering whether it causes real danger or substantial harm. One is the mode of conduct. The elements of the crime of secession are specifically manifested as "organizing, planning, and implementing", and are described in the three modes of conduct in Article 20 (1) of the Hong Kong National Security Law. Furthermore, in Article 21 of the law, preparatory, aiding, or accomplice acts are classified as principal offenses. The second aspect is the content of the behavior. The precise interpretation of the elements of the crime of secession should grasp the following points: firstly, the specific behavior is a behavior that endangers national unity and territorial integrity; Secondly, the legislation lists specific ways. The behavior involves not only the Hong Kong Special Administrative Region, but also any other part of our country. The specific behavior includes illegally changing the legal status of the above-mentioned places, separating the above-mentioned places from our country, or transferring them to foreign rule. Thirdly, the use of force or the threat of force is not a necessary requirement. The crime of secession is usually accompanied by violent acts, but the harmful consequences of non violent acts can sometimes be even more severe. Fourthly, the act of preparing, aiding, or conspiring shall be defined as a separate offense. In common law, incitement is considered a preliminary offense. Unlike substantive offenses that focus on harmful behavior and harmful outcomes, incitement is based on

criminal psychology and the resulting danger or risk. Therefore, even if incitement is not carried out, it can still be punished. [1]Funding refers to providing funds, venues, and materials to entities that commit specific crimes that endanger national security or to entities that commit such crimes. There are no restrictive regulations on the specific funding methods. Defining preparatory behavior as a crime can achieve timely intervention in criminal behavior and prevent direct harm from occurring.[2]Moreover, in order to avoid causing significant national security risks, the above-mentioned actions have the abstract danger of being punishable. It is both necessary and legitimate to protect the most important national security interests through the criminal constitutive model of principal offender.

3. CRIME OF SUBVERTING STATE POWER

Article 22 of the Hong Kong National Security Law stipulates that "any person who aims to overthrow the state power... shall be guilty of a crime." Article 23 of the Hong Kong National Security Law stipulates that "any person who incites, assists, instigates, or provides financial or other financial support to another person to commit a crime... shall be guilty of a crime." The former refers to the crime of subverting the state power constituted by the act of implementation, while the latter refers to the crime of subverting the state power constituted by the act of preparation, assistance, or complicity. The legal interest infringed by this crime is the state power of the people's democratic dictatorship.

3.1. Intentional Elements

Subverting state power "is an intentional element that constitutes the crime, emphasizing the subjective intention and purpose of the perpetrator. It refers to the perpetrator knowing that their behavior will or may lead to the destruction of the fundamental system of the country, the overthrow of state power organs, and the inability of state power organs to perform their functions normally, and actively pursuing the occurrence of such consequences. In addition, the nature of the offense constitutes the act of committing a crime, so the subjective intention of the perpetrator should reach an attitude sufficient to recognize the harmful consequences, without requiring an actual attitude. However, it should be distinguished that the majority of auxiliary acts constituting this crime are direct intent, and the possibility of indirect intent by allowing harmful consequences to occur cannot be ruled out. The perpetrator does not subjectively have the criminal purpose of subverting state power and cannot be identified as this crime. The specific intention of this crime consists of three specific contents: first, to overthrow or undermine the fundamental system stipulated in the Constitution. The socialist system is the fundamental system of our country. Moreover, Article 23 of the Basic Law of Hong Kong has clearly defined the meaning of the Central People's Government including the socialist system during the formulation process. [3]Attempting to abolish the socialist system established by the Constitution clearly constitutes the content of this crime.[4]In addition, as the fundamental political system of China, the People's Congress system should also be included. Secondly, overthrow the central government or the Hong Kong Special Administrative Region government. The central government refers to the organs that exercise central power, including but not limited to the Central People's Government. The Hong Kong political authorities refer to the bodies that exercise the powers of the Special Administrative Region, including but not limited to the SAR government. Thirdly, it hinders the central or special administrative authorities from performing their functions in accordance with the law. Fourthly, attacking and damaging the performance venues and facilities of Hong Kong government agencies, causing them to be unable to perform their functions normally.

3.2. Behavioral Elements

This crime is a behavioral offense. There may be various ways of subversion, including public and secret means, as well as violent and nonviolent means. The elements of this crime are abstractly expressed as "organizing, planning, and implementing", and specifically expressed as "overthrowing, destroying, interfering, obstructing, and attacking" in the four items of Article 22 (1) of the Hong Kong National Security Law. Furthermore, in Article 23 of the law, preparatory, aiding, or accomplice behavior is criminalized. The precise interpretation of the elements of the crime of subverting state power should grasp the following points: firstly, organizing, planning, implementing, or participating in the implementation of the act of subverting state power. Article 22 of the Hong Kong National Security Law specifies the elements of the crime of subverting state power: firstly, organization. Organization refers to the purposeful and planned selection and collection of personnel to form an organic whole, such as forming reactionary groups, leading reactionary criminal groups, directing the formulation of plans to overthrow the regime, and directing the implementation of actions to overthrow the regime. Secondly, planning. Planning refers to a conspiracy plan, such as secretly plotting to change the nature of the regime, formulating plans and schemes for usurping party power, and devising countermeasures to evade legal punishment. Thirdly, implement or participate in the implementation. For example, directly following the leadership of the organizers of the reactionary group, implementing plans to overthrow the regime, mainly participating in direct implementation activities such as usurping the party, changing the nature of the regime, and changing the socialist system. The second is that the crime requires "the use of force, threat of force, or other illegal means" as a necessary element, with "overturning, destruction, interference, obstruction, attack" and other behaviors as specific manifestations, and has a certain degree of aggression, threat, and violence. The third is to classify preparatory, aiding, or accomplice behavior as separate offenses.

4. TERRORIST CRIMES

The third section of Chapter 3 of the Hong Kong National Security Law stipulates the crime of terrorist activities from Articles 24 to 28. This type of crime involves several specific charges and is the most detailed and specific among the four types of crimes. This reflects the urgency of punishing terrorist crimes and the seriousness of their infringement on legal interests. The subject of this type of crime is a general subject, and anyone can constitute this crime. The ultimate goal of this crime is to realize political beliefs. By analyzing the contents of Articles 24 to 28 and referring to the design of terrorism crimes in mainland Chinese criminal law, the Hong Kong National Security Law provides five specific charges for terrorism crimes. If we follow the basic theory of the Mainland's Criminal Law, the third section of the Hong Kong National Security Law on terrorist activities is a crime against public security, but this crime is essentially a threat to national security. Moreover, according to the provisions of the Hong Kong National Security Law regarding the intention of terrorist activities as "realizing political propositions", terrorist activities should be considered as one of the crimes that endanger national security.

4.1. Crimes of Terrorist Activities

The crime of terrorist activities is the main and core charge in this category of crimes, and the design of other related charges follows the basic elements of the crime of terrorist activities. The constituent elements of the crime of terrorist activities still include intention and behavior. One is that the criminal intent of this crime is to achieve political goals. The perpetrator of terrorist activities targets the Central People's Government, the Hong Kong Special Administrative Region Government, international organizations, or the public, and uses coercion and intimidation to achieve their political goals. Different from ordinary violent crimes, the criminal purpose of terrorist crimes is specific, dual, and hierarchical, that is, to create social panic through terrorist means, in order to intimidate and blackmail the government and society, and achieve its deep political, economic, and other social goals.

The second is behavioral performance. The constituent elements of the crime of terrorist activities adopt a legislative model of "summary+enumeration", with "organizing, planning, implementing, participating in or threatening to implement terrorist activities" as a general abstract expression, and "(1) serious violence against people; (2) explosion, arson or release of toxic, radioactive, infectious disease pathogens and other substances; (3) destruction of transportation vehicles, transportation facilities, power equipment, gas equipment or other flammable and explosive equipment; (4) serious interference and destruction of electronic control systems for public services and management such as water, electricity, gas, transportation, communication, networks; (5) serious harm to public health or safety by other dangerous methods" as a specific expression. The above legislative approach can aggregate different specific behaviors with common essential attributes of terrorist crimes, strengthen the essential characteristics of terrorist crimes, and facilitate the identification and precise crackdown on terrorist crimes. From the description of the modifier and qualifier "causing or intending to cause serious social harm" in Article 24 of the law, it can be seen that the crime of terrorist activities is a criminal act and does not rely on whether it actually produces harmful consequences as a constituent element.

4.2. Crimes Related to Terrorist Activities

One is the crime of organizing, leading, and participating in terrorist activities. This is a selective charge, and the key to its establishment lies in the identification of terrorist organizations. Legally speaking, a terrorist organization refers to a particularly serious criminal organization that is organized by multiple individuals in a relatively tight form, with the intention of influencing or manipulating government actions to achieve their political or other social goals through the implementation of acts and activities with terrorist characteristics.[5] Terrorist organizations generally have the following characteristics: the subject must be three or more people; For the purpose of carrying out terrorist activities; Having a rigorous organizational structure; Has a certain degree of stability; It has great social harm and danger.[6] The subjective aspect of this crime can only be intent, and can only be direct intent. But as far as the content is known, it is legitimate for organizations, leaders, and even active participants to have a certain "terrorist activity" purpose, and there is no mandatory requirement for other participants or even forced participants.

Secondly, the crime of aiding terrorist activities. The behavior of this crime is to provide "support, assistance, and convenience" for terrorist activities, covering specific ways of providing "training, weapons, information, funds, materials, labor, transportation, technology, or venues" for terrorist organizations, personnel, or activities. This crime belongs to the criminalization of aiding and abetting, with the aim of eliminating the danger caused by terrorist activities as soon as possible, thereby avoiding actual harmful consequences.[7] This crime is mainly characterized by intent, which requires clear understanding.

Thirdly, prepare to commit the crime of terrorist activities. This crime is a preparatory state for "carrying out terrorist activities" and belongs to the typical charge of "normalizing preparatory behavior". The specific charges cover "manufacturing, illegally possessing explosive, toxic, radioactive, infectious disease pathogens and other forms". Terrorist crimes are different from ordinary crimes. Terrorism itself is an impact on social stability, and the preparatory behavior is sufficient to indicate that the perpetrator subjectively has a sense of harm, and objectively has also violated people's right to mental peace. "[8] Moreover, once committed, the harmful consequences are enormous and extremely destructive. Due to the fact that the above-mentioned behavior is critical to the actual implementation, if there is no external intervention, its infringement of legal interests will be highlighted and realized in reality.[9] The act of preparing to carry out terrorist activities meets the substantive requirements for becoming an independent preparatory crime. The preparatory act of preparing to carry out terrorist activities meets the formal and substantive requirements for establishing a substantive preparatory offense, and as a substantive preparatory offense, its independent punishment has a theoretical basis.[10] The "other forms of preparation" in the elements

of this crime should be interpreted with clear limitations and proportionality. The harm of this act should be equivalent to that of the preparatory act stipulated in this article, and should be limited to the scope that will be directly used by specific terrorist activities, rather than referring to any preparatory act in general.[11]

Fourthly, the crime of promoting terrorism and inciting the implementation of terrorist activities. The perpetrator of this crime is subjectively intentional and can only be directly intentional. The objective aspect of this crime is manifested as the act of producing or distributing books, audio and video materials, or other items that promote terrorism, or promoting terrorism through teaching, disseminating information, or inciting others to carry out terrorist activities. The target of this criminal act is an unspecified person or a majority of people, which is distinguished from instigation acts committed only against specific individuals. This crime belongs to the category of behavioral offenses, which means that as long as the perpetrator engages in acts of propaganda or incitement, it constitutes this crime, regardless of whether others see, accept, are incited or carry out the content of terrorism or extremism they promote, it does not affect the composition of this crime.[12]Based on the general attribute of "inciting crime" of this crime, the punishment of the perpetrator for this crime should grasp the key to the rule of law and counter-terrorism, that is, the balance between achieving national security and safeguarding civil liberties.[13]

5. CRIME OF COLLUDING WITH FOREIGN OR FOREIGN FORCES TO ENDANGER NATIONAL SECURITY

Article 29 of Section 4 of the Hong Kong National Security Law stipulates the crime of colluding with foreign countries or foreign forces to endanger national security, and clearly punishes acts of collusion between internal and external forces, especially those against China and Hong Kong, which endanger national sovereignty, security, and development interests. The establishment of this charge has deterred external forces from plotting to turn Hong Kong into an anti China and anti Hong Kong battlefield, ensuring the stability and long-term stability of the "One Country, Two Systems" policy and the stability of Hong Kong. It is a powerful deterrent.

5.1. Intentional Elements

One is that this crime is subjectively intentional and implemented through collusion. The second is the normative connotation of "knowing" in this crime. The term 'knowingly' in this crime has two meanings: knowingly targeting state secrets or intelligence related to national security, including countries, governments, and special zones; Knowing that the target of "collusion" is overseas organizations, institutions, and personnel. The third is that the criminal purpose of this crime includes endangering national security. This subjective purpose is an important criterion for determining whether a crime has been committed and on what charges it should be convicted. But it is not the only sign and essential element, that is, even if the perpetrator subjectively does not have the purpose of endangering national security and interests, as long as they objectively cause harm, it can still constitute this crime. For example, if the perpetrator engages in "collusion" behavior to obtain material or other improper benefits, it also constitutes this crime. As for the motive of the perpetrator, it does not affect the establishment of this crime.

5.2. Behavioral Elements

One is that the nature of the crime belongs to the category of behavioral offenses and carries abstract risks that endanger national security. The specific behavior of "collusion" is manifested as "using force or the threat of force", "may cause serious consequences", "hostility", etc. Through the analysis of legislative language, the severity of this crime should match the severity of the punishment. Furthermore, although the term 'endangering national security' is not explicitly stated in Article 29,

based on the fact that this charge falls under one of the four categories of crimes endangering national security under the Hong Kong National Security Law, and from the legislative expression of Article 29, the criminal acts of this crime are targeted at 'the state', 'the government', 'the special administrative region', etc. Therefore, based on the consideration of systematicity and direct targeting of behavior, the crime of colluding with foreign or overseas forces to endanger national security should have "endangering national security" as a necessary constituent element. The second is that the act of "collusion" refers to secret collusion and improper connections, which is different from general non criminal external "collusion" and focuses more on foreign-related factors and specific behaviors. The third is to clarify the specific manifestations of theft, espionage, bribery, and illegal provision related to national security secrets and intelligence. Anyone can be the perpetrator of such behavior. Among them, theft refers to the use of peaceful means, such as theft, secret copying, or the secret acquisition of equipment such as computers, eavesdropping, and stealing photos; Spying refers to inquiring; Buying refers to the use of money, material or other benefits to exchange for; Illegal provision refers to providing in violation of national laws and regulations, regardless of the means used. The fourth is the specific manifestation of requesting, uniting, and accepting external support that endangers national security. This type of collusion behavior reflects the attachment and reliance on foreign or overseas forces.[14]This type of collusion is limited to the five specific ways of conduct specified in Article 29 of the law.

6. CONCLUSION

The legislative provisions of the Hong Kong National Security Law on criminal jurisdiction objects reveal the specific application and legal effectiveness of the law in safeguarding national security. This law clearly regulates four types of criminal acts that endanger national security, including the crimes of secession, subversion of state power, terrorist activities, and colluding with foreign or foreign forces to endanger national security. On the one hand, each type of crime has its specific elements of intent and behavior, reflecting the strict requirements of the law for the constitutive elements of the crime. This law emphasizes the inseparability between criminal intent and criminal behavior, as well as the criminalization of preparatory, aiding, or accomplice behavior, demonstrating a determination to intervene early in criminal behavior. On the other hand, the law not only covers the backbone and core of the crime of terrorist activities in its regulation, but also includes the design of related charges, reflecting the crackdown on the entire chain of terrorist crimes. Moreover, the establishment of the crime of colluding with foreign or foreign forces to endanger national security has severely punished acts of internal and external collusion, effectively curbing the threat of external forces to national security. The Hong Kong National Security Law provides solid legal protection for the long-term stability and national security of the Hong Kong Special Administrative Region with its clear legal norms and strict sanctions mechanism.

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