

# **Criminal Law Regulation of Legal Means to Defraud the National Welfare Behavior**

## **--from the Perspective of Equality of Opportunity Protection**

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**Key words:** legal means; national welfare; criminal law regulation; equality of opportunity protection

**Abstract:** With the gradual increase of government's input to national welfare, there have been many acts of defrauding national welfare in the legal form. How to regulate the conduct of such acts, so as to ensure that citizens can enjoy the welfare of the country on an equal footing and become a very prominent and important issue. The first method of criminal law regulation is to directly punish the perpetrator, which undermines the citizens of the simple sense of punishment, but also undermines the modesty of criminal law tolerance. The second method is to punish the relevant public officials, which in line with the criminal law of rational choice, and complete the criminal law of the expected task.

### **Introduction**

In China, it occurred in the case of such a case: Mr. Zhang and Ms. Liu are a couple, and Mr. Zhang in an international chain of business, whose income is extremely rich. And Ms. Liu has no career, without source of income. At that time, the city's affordable housing application work began, this couple in order to buy cheap the fitness room, they divorced. After the name of Mr. Zhang to apply for fitness room, but in order to prevent Mr. Zhang privately swallowed the house, so that Mr. Zhang married Ms. Liu's mother. Mr. Zhang and Ms. Zhao went to the fitness room management office to apply for housing, the staff carried out a formal review after the house sold to them. There are many cases of similar citizens who cheat state welfare in a formal and legal way, so that many citizens who are law-abiding have a strong sense of injustice. The root cause of this disillusionment is an important idea that the perpetrator maliciously deprives others of equal access to national welfare and undermines the equality of opportunity as a modern legal society.

In his theory of justice, Rawls had defined equality of opportunity: "In all parts of society, there should be roughly equal education and achievement prospects for every person with similar motivations and endowments. With the same ability and aspirations of the people's expectations,

should not be affected by their social origin "[1]. The government plays an important role in the equal protection of opportunity, and our current government does not play its part. China's government investment in the welfare of citizens in a substantial increase, and in this context, the emergence of many citizens of individuals in a legitimate way to defraud the national welfare behavior, which is out of tune with the idea of the people's livelihood. An important connotation of the people's livelihood is the equal protection of the opportunity, so this is a very worthy of the criminal law regulation.

### **One way of criminal law regulation: direct punishment of the perpetrator**

If the behavior of the perpetrator of the conviction and sentencing, then the criminal law is the most consistent with the elements of this behavior is the crime of fraud.

First of all, from the objective elements of the crime of fraud: "It requires the perpetrator to implement the fictional facts and conceal the truth of the behavior, so that the fraud is a misunderstanding, and the deceived is based on the wrong understanding of financial affairs." The most important feature of the act of deceiving state welfare in the form of law is that it is completely legal in its form, but its purpose is completely unlawful. If the legal nature of this form is defined as fraud, it is in full compliance with the principle of criminal hermeneutics.

Second, the object of fraud is, in principle, limited to natural persons. The state as an independent civil subject, with state - owned property to participate in civil activities, directly pursue and realize the interests of all the people, and other civil subjects in equal position [2]. Since the state and the natural person in an equal position, natural person can become the object of fraud, the state can also become the object of fraud.

Finally, from the subjective elements of the crime of fraud, it requires the perpetrator to have the purpose of illegal possession. The purpose of this behavior is very obvious, because they want to own their own national welfare for their own. So, in terms of subjective aspects are also fully consistent with the characteristics of the crime of fraud.

In summary, the result of the analysis from various aspects is that the legal act of fraudulent national welfare is in full compliance with the conditions of the crime of fraud and can be convicted and sentenced according to the crime of fraud.

This form of legal fraudulent acts of national welfare, although in line with the composition of the crime of fraud, but if the judicial practice in accordance with the crime of fraud can pursue the criminal responsibility of the perpetrators, so the drawback is significantly greater than the advantages. Its advantage is to be able to directly combat this behavior, to curb the development of such behavior momentum. But the same shortcomings exist, that is, the destruction of the citizens

of the simple sense of punishment, which undermines the criminal law that has the image of tolerance and modesty, so that people have a very strong fear of criminal law and resentment.

The above case was made into a questionnaire, the survey on the Internet random 500 people, more than 98 percent of those who think that the punishment is unreasonable, the vast majority of people think that as long as the house can be recovered the corresponding effect. Moreover, the use of heavy code to govern the society, in essence, violates the tolerance of criminal law, but also with the humanism of the modern spirit of the rule of law and the value of the contradictions. Emphasis on the tolerance of criminal law is to have a full understanding of the weaknesses of human nature itself and to treat these weaknesses in an inclusive manner. When the law enforcement officers of this behavior to make a tolerant treatment, the people will be grateful to law enforcement students, but will change their behavior, and gradually move away from the crime of the road [3].

Therefore, it is to see the immediate impact of the performance of its character as a crime, or to maintain the Catholic image of the criminal law to protect the simple feeling of citizens, the perpetrators do not pursue, which makes law enforcement faces a difficult choice.

### **The second way of criminal law: the relevant public officials to punish**

The relevant public officer is a public officer who is specifically responsible for the distribution of benefits. Compared with the direct punishment of the perpetrators, the relevant public officials can punish more rationally. Whether it is the ultimate analysis of its ultimate reasons, compared with other crimes, or from the social effects of the point of view, the punishment of public officials is more in line with the equal opportunity to protect the value of the target.

First, the reason for the fraudulent national welfare is that there is a lot of flaws in the development of national rules. The direct punishment of the perpetrators, means that people pay for the country's misconduct, such a regulatory approach is unnecessary and even have side effects. An important connotation of equality of opportunity is that "the government wants to create directly for citizens to provide equal conditions that will help the equal implementation of the opportunity" [4]. If there are a lot of loopholes in the formulation of the policy, the government will not do its duty, and in this case, it is unreasonable to punish the perpetrators. Therefore, the general citizens cannot be blamed, while the welfare of the distribution of policies should be improved to strict welfare distribution of law enforcement as the goal.

Second, the behavior of fraudulent national welfare is compared with another reasonable tax avoidance behavior of the same nature. China is currently a reasonable tax avoidance behavior is not punished. Tax avoidance behavior in essence, is a legitimate form, to avoid the obligation to pay taxes. Nature and deceive the national welfare behavior is exactly the same, but the form of legal

and substantive is not legitimate. From the amount of point of view, the amount of tax avoidance is far greater than the amount of a country to cheat the amount of national welfare. According to incomplete statistics, each business every year if the tax properly, you can pay less taxes to reach more than 5% of turnover. Such a behavior is not punished, but to the residents of such a small amount of punishment is obviously unreasonable. Since the punishment person is unreasonable, in order to curb the rising trend of such behavior, the punishment of the distribution of welfare public office has become a rational choice.

Third, from the point of view of the social effects. The punishment of public officials who distribute benefits can form a rigorous work style in the area of work responsible for welfare distribution, prompting public officials to pay careful attention to their actions, to conduct a substantive review of the distribution of national welfare, to promote equal protection of opportunities. Welfare can be assigned to those who deserve it. Especially in the current social situation, the state's investment in people's livelihood and welfare gradually increased, the legal form of fraudulent acts are still greatly increased, and China's livelihood and social security legislation is very missing, only for some serious violations of citizens of the social security rights and the basic rights of criminal acts in order to ensure that the majority of vulnerable groups of society to obtain adequate relief to ensure that every citizen can enjoy the benefits of the country on an equal footing.

To punish relevant public officials, their duty of malfeasance can be directly pursued. In the crime of malfeasance, and with the legal form of fraudulent national welfare behavior is the most consistent with the dereliction of duty.

The objective behavior of the dereliction of duty is manifested as acts of serious irresponsibility, failure to perform or improperly perform duties in the work, resulting in significant losses to the interests of the state and the people or public property [5]. In the process of defrauding the national welfare behavior in the form of lawfulness, the public officials often have the act of failing to perform their own review obligations improperly, and only the formal examination of the application materials of some applicants, so that some legal forms have cheated the country's welfare, resulting in a significant loss of state property. The judgment of the criminal responsibility of a public official is based on the material submitted by the applicant, and if there is an unreasonable place in the material, and there is no record of the substantive examination, it means that the staff member cannot perform the relevant duties correctly. It will assign the national welfare to the applicant, and it can be held accountable for their duty of duty.

The dereliction of duty is a result of the fact that the public property, the state and the people's interests have suffered heavy losses, which is a necessary condition for constituting this crime [5].

In judicial practice, the amount of state welfare evaded by the perpetrator is often more than the standard of duty for dereliction of duty. Therefore, it is the result of the crime of dereliction of duty for the person who specializes in public office Constituent elements.

The dereliction of duty is a general provision for the negligence of criminals of state organs, and applies only to cases where the staff of the state organs who do not expressly provide for the criminal law are guilty of negligence. [5] If the provisions of the criminal law are clearly defined, then this special provision with the dereliction of duty can form a special law and the relationship between general law, in the judicial practice priority application of special law. But in the case of the crime of dereliction of duty in our country, and no offense can be in a legal form to cheat the welfare of the country in line with the behavior, so this behavior can only be dismissed guilty.

## **Conclusion**

In short, in the case of a large number of acts of fraudulent state welfare in the legal form, the criminal responsibility of the public officials responsible for the distribution of benefits is the rational choice of criminal law regulation. But it must be pointed out that the punishment of relevant public officials is not the only solution, but also in a beyond the level of criminal law to improve the national policy that is to improve the welfare of the distribution of legislation, to expect the government to create a good soft environment, to ensure that every citizen can equal access to national welfare opportunities, and ultimately to achieve the equal opportunity to protect the value of this goal.

## **References:**

- [1] John Rawls. Theory of Justice[M]. Beijing: China Social Science Press, 1998, p. 69.
- [2] Ma Junju. Yu Yan Man: The Original Theory of Civil Law[M]. Beijing: Law Press, 2010, the first 175,176 pages.
- [3] Zhang Yong. The Character of the People's Livelihood Criminal Law: and Amendments to the Criminal Law 8[M].Hebei Law, June 2011, p. 74.
- [4] Wu Zhongmin. On Equal Opportunity[M]. Jianghai Journal, 2001 No. 1, p. 58.
- [5] GaoMingxuan, Ma Kechang, Zhao Bingzhi. Criminal Law[M]. Beijing: Peking University Press, Higher Education Press, 2010, 650,651 pages.