The System of Special Witnesses in Bribery Crime

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Abstract. It is necessary to introduce special witness system for the practical problem of bribery crime in judicial practice. The basic content of this paper expounds the special witness system, and analyzed the relevant comparison method, the feasibility and necessity of introducing special witness system analysis, put forward in the bribery case to introduce special witness system of the specific ideas.

An Overview

Special witnesses, refers to the people involved in criminal activities, to reduce or exempt from his criminal responsibility according to law, cooperating with state prosecution organs, as the prosecution witness against other suspects criminal facts, in particular, is the man with a criminal stain. The nature of the special witness testimony system is a judicial system to obtain key evidences for the purpose of the prosecution. The implementation of this system is a compromise between the two sides.

Under the special witness waiver system, the special witness may be exempted from all or part of his criminal responsibility for his testimony. As a criminal measure, its initiation is conditional on the refusal of a special witness to testify. Special witnesses themselves are criminal suspects or defendants with criminal facts and have the right of silence. The judiciary should respect their right of silence, cannot take coercive measures, and can only withdraw from it in exchange for the testimony of special witnesses. Once enabled, the exemption system have mandatory, the witness must provide all the known case facts, including the unfavorable situation, and otherwise it shall bear the unfavorable legal consequences. Finally, the exemption applies with rigour, must end in the judicial authority to lower part can be used, still unable to obtain proof and sacrifice case justice must be smaller than to the pursuit of justice.

Comparative Analysis

Germany rules the country witness exemption clauses, to testify the applicable exemption system crime is a serious terrorist crime, as well as endangering state security, did not mention about bribery crime case, but the German special witness exemption is done by the prosecutor not to prosecute the exemption, and the specific range, is a kind of informal immunity. In the United Kingdom, the special witness's testimony to the exemption system can make up for the loss of witnesses. The special witness in the United Kingdom testified that the exemption was similar to the use of evidence, which could be seen in its legal provisions. In the process of investigation involving the serious fraud crime, the criminal suspect shall have the right to demand any investigation or witnesses to answer any questions or provide information about the survey items and files, won the state shall not be used as evidence against statements people, but if people accused stated under investigation when make false statements under perjury prosecution. A special witness in a British bribery case is exempt from prosecution only for his testimony or information provided by his testimony. The United States passed the first federal exemption legislation, which stipulates that all witnesses who testify in congress are exempt from prosecution for any facts or actions involved in their testimony. Under this exemption system, special witnesses shall be
completely exempted from criminal liability after providing the testimony, except that the witness is
perjury. The two exemptions are in parallel in the United States and federal applicable evidence
exemptions, but the law does not prohibit states from applying crimes exemptions.

**Judicial Practice of Bribery Cases in China**

Bribery crime is a kind of crime in China's criminal law, including bribery, bribery, unit bribery,
 bribery and bribery. At present, there are some difficulties in the investigation of bribery crime in
China. Especially under the condition of the briber and the recipient are silent, often fall into the
predicament of the investigation, prosecution authority even invested a lot of manpower, material
resources and financial resources, also often difficult to get the key evidence to solve the case. In
recent years, the way of bribery crime has become increasingly diverse, science and technology, and
more subtle, cunning, it increases the difficulty for case investigation, has led some bribery crimes
may not be able to investigate, there are some serious bribery crime suspicion person unable to
obtain evidence directly, only according to the crime of huge property's unclear source, or a smaller
amount of bribery crime case, influence to crack down on the crime of corruption.

Bribery crime is different from ordinary criminal cases, which also makes it difficult to
investigate the cases. Bribery, bribery and bribery are mostly held in private venues, and in the
process, there is usually no third person present. Because a third person's knowledge is a threat to
security, there can be no witnesses in the general bribery crime. Circumstantial evidence is scarce,
bribery crime means simple agile, in order to avoid future erratically, bribery, both sides usually
choose cash transactions or barter trade, rather than later can query to the way such as credit card,
certificates of deposit, so rarely bribery crime evidence. Bribery information closed, said bribery
and corruption cases of the criminal law the criminal suspect or defendant for involution, are often
the perpetrators "one to one" to the implementation of the related crime, outsiders knowledge very
hard, and many briber, recipient relations are often complex, lead to difficulties in the process of
investigation.

**Construction of Special Witness System in Bribery Crime**

**The Significance of System Construction**

Bribery crime is a typical case with rare physical evidence and large oral supply. In the course of the
crime, there are usually only bribes and bribe-taking parties. There is no evidence of a third party,
so the testimony of the briber is precious. In order to avoid self-in criminality, the bribe payers
themselves have been involved in the crime. In order to avoid self-in criminality, they are often
afraid to provide truthful evidence and even cooperate with the briber to counter investigation,
which makes bribery cases difficult to investigate. It is of great significance to construct special
witness testimony exemption system and to investigate bribery crime cases. Make up for the
insufficiency of forensics difficulties and improve the efficiency of litigation. In the case of bribery,
the majority of bribe-payers are reluctant to testify as witnesses for their own interests, and few
other informed witnesses. Bribery crime is mostly private and secret, with a strong concealment,
lack of objective evidence such as material evidence and documentary evidence, so it is very
difficult to investigate the work. As an important source of knowledge, the testimony of the briber
has a key role in the investigation and conviction of bribery cases. Special witness immunity system
is to break the line of the recipient of the benefit community pattern, through to the briber crime
immunity to reassure their concern, encourage the positive witness, charged with a crime, so as to
effectively solve the problem of bribery crime forensics, conviction, and improve the efficiency of
lawsuit. It is conducive to the fundamental prevention of corruption. The crime of bribery crime has
a strong concealment, and the criminal is in a highly dependent state of interest and has a strong
fluke. Establish special witness in bribery crime system, make it realize that even if I do not
confession criminal facts, partners in crime may also be converted to the prosecution witness in the
case against the crimes, and thus easier to active confessions. It is possible to break the hubristic
psychology of the bribe-payers, improve the detection rate of bribery crime, and form a great psychological deterrent, thus reducing the occurrence of corruption crimes. There are few objective evidence, such as evidence of bribery and documentary evidence, which is often the key to conviction. In order to achieve the purpose of pursuing a crime, the judicial organ may take extreme measures in the absence of other evidence. In order to obtain the confession of the suspect, some investigators may take some illegal measures such as continuous formality, disguised detention and even torture. This not only seriously infringed the human rights of the suspect, but also made the investigators themselves commit crimes. And the special witness criminal liability exemption system, special witnesses voluntarily choose to testify, not only to guarantee the rights of suspects, but also to prevent the occurrence of illegal investigation activities.

The Basis of System Construction
China has signed the international covenant on civil and political rights, which stipulates that citizens have the right not to be forced to testify against himself or to compel recognition of crime. In the case of bribery, the special witness shall not be forced to testify against himself or be forced to testify against himself. China has signed the United Nations convention against transnational organized crime and the United Nations convention against corruption. These two conventions stipulate that a special witness who truthfully testifies or provides other critical evidence should be reduced or exempted from punishment. Our country joins these two conventions, the special witness system should be regulated in the fight against corruption and bribery crime. In China's current laws and regulations on bribery crime, special witnesses testify the exemption system. Many of the provisions of the criminal law are implicit in the special witness exemption system. In the case of bribery crime, the briber who voluntarily confessed the bribe before being prosecuted may be given a mitigated punishment or be exempted from punishment. The introduction of bribes to introduce bribes before being prosecuted can be reduced or exempted from punishment, essentially encouraging the briber to introduce the bribe-payer as a witness. The criminal procedure law stipulates that the principle of self-incrimination is not compulsory, and the exemption system of special witnesses provides the legislative guarantee. A special witness is generally a minor criminal suspect, and in accordance with this rule, the people's procuratorate may, in accordance with this rule, be exempted from punishment and no decision on prosecution. As far as judicial practice is concerned, there is a system of exemption of criminal liability for special witnesses when dealing with bribery crime cases. In bribery cases, the practice of bribe-taking is much less than bribery. The main reason is to cooperate with the prosecutors to accuse the briber and act as a special witness.

Assumptions of Construction
Our country should establish a system for crimes waivers and the use of immunity as a subsidiary. Exemption system for general briber with crimes, as long as its actively provide evidence in the investigation or prosecution charged with a crime, the judicial organs to be involved in the crime from him shall be investigated for criminal responsibility according to law; Have serious consequences for bribery, bribery of serious offenders, then you can use exemptions apply evidence, the testimony provided or according to the testimony evidence as evidence against him, the judicial organs according to other sources have mastered enough evidence, can still be prosecuted, but should be mitigated punishment or be exempted from punishment in accordance with the law.

Scope of Applicable Objects
The special witness must first have a real crime spot, in the bribery crime, the subjective should have the purpose of seeking illegitimate interests. For the purpose of obtaining a legitimate benefit, the person who has paid the bribe is not a special witness to be exempted from the crime. In the case of bribery, the special witness immunity system is mainly applicable to the briber and the bribe, because they are relatively minor in crimes and are subordinate to the crime. And the briber, who is often serious and in the main position in crime, is not applicable to this system.
Applicable Conditions
Briber, introduces a bribe people's testimony and other evidence is find out the case facts, offers necessary to prosecute a crime of bribery crime, not the evidence, the case can't solve or is difficult to find out and identified. Briber, introduces a bribe people hand over to treat, or provide evidence must reflect the criminal stain, is about his bribery, bribery and is associated with the practice of bribery. The special witness system is not applicable to whistleblowing or other criminal cases, and only the relevant provisions of meritorious service are applicable. There is no other way for the procuratorial organ to use it, which means that it is too costly to use conventional means to obtain or obtain evidence.

Applicable Procedures
In our country, the bribery case is investigated by the procuratorate, whether the special witness in the bribery case is exempt, the decision should be given to the procuratorate's is the starter of the proceedings, the court is to play a role in the proceedings, the people's procuratorate shall notify at the corresponding levels to carry out special witness exemption initially court, the court review the case, if there is objection, procuratorate should be reported to the superior, this also is the embodiment of the implementation of supervision principle.

Restriction Mechanism
The testimony of special witnesses is valuable, but it is not infallible. There should be a corresponding collection mechanism. The criminal procedure law stipulates that only the defendant has said that there is no other evidence to convict the defendant. The testimony of a special witness is not enough. Against the defendant and the criminal suspect is guilty, but also need other auxiliary evidence, for special the admissibility of the witness's testimony, to be established for its reinforcement principles, can enhance the credibility, efforts should be made to find that is associated with the special witness testimony of material evidence, documentary evidence, etc., to complement the probative value of witness's testimony, and strictly implement the illegal evidence exclusion rule.

Disciplinary Mechanism
The criminal procedure law stipulates that a witness is guilty of false testimony, intentionally making false proofs, intending to set up another person or concealing a crime, which has an important relationship with the case. In the case of bribery, the anti-corruption and bribery bureau should reach an agreement with a special witness, sign a confirmation letter, and inform its rights and obligations. The special witness enjoys immunity provided that his statement is true and valid and consistent with the requirements of the judiciary, otherwise he will no longer have immunity. The prosecution may, in accordance with the law, pursue the crime of a special witness for perjury, if the circumstances are serious, he may be investigated for the criminal responsibility of perjury. In addition, many special witnesses first agreed to testify with the prosecution, but then refused to testify, wasting judicial resources. In accordance with the provisions of the criminal law of our country, the special witness shall bear the criminal responsibility for perjury. However, for special witness refused to testify, there is no corresponding criminal responsibility, can draw lessons from the practice of Britain and the United States, such as the witness without justifiable reasons not to appear in court to testify, the judge may decide to be arrested and its constitutes criminal contempt. In order to verify the procedure of the special witness, our country may stipulate that the special witness first agree to testify, than refuse to testify, and the act constitutes contempt of court.

Conclusion
In order to improve the litigation efficiency of bribery case, should from the judicial practice, in the bribery crime stipulated in the special witness to testify exemption system, and both can effectively crack down on the crime of bribery, and rational allocation of judicial resources, and to encourage witnesses involved in the bribery crime actively provide important evidence, embodies the
combination of punishing crime and guarantee human rights, have also been used in the judicial practice in our country.

References