AN EMPIRICAL STUDY OF EMBEZZLEMENT CASES IN CHINA

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ABSTRACT

Using the method of empirical research, this paper selects 194 valid judgments of embezzlement cases published by Chinese officials in 2019 as samples to explore the current situation of the subject, object and sentencing results of embezzlement cases. The analysis discloses some characteristics such as high educational level of criminals and high proportion of state organ staffs and grass-roots public servants. At the same time, many problems are revealed, such as the division of powers and responsibilities within the enterprises is not clear, as well as the external supervision in key fields is not enough, which all provide conditions for embezzlement crime. In addition, the phenomenon of unfair sentencing is obvious, and the sentencing mode is not accurately applied in judicial practice at this stage. Therefore, a more reasonable, accurate and effective embezzlement crime prevention system needs to be established in the future.

KEYWORDS: *embezzlement, empirical study, criminal law, China*

INTRODUCTION

The crime of embezzlement not only seriously infringes on the ownership of public property, but also tarnishes the image of state workers and undermines the position and prestige of the government in the hearts of the people. As one of the most serious corruption crimes, its harm can not be underestimated.

Looking at the work reports from Chinese Supreme People's Procuratorate and the Supreme People's Court in recent years, as it is shown in Figure 1, in 2013, there were 29,000 cases of dereliction of duty, embezzlement and bribery crimes as well as 31,000 state staffs participated in. In 2014, the number of embezzlement related criminal cases and criminals reached 31,000 and 44,000 respectively. In 2015, the data were 34,000 cases and 49,000 criminals, with a year-on-year increase of 9.7% and 11.4% respectively. In 2016, 45,000 embezzlement and bribery cases and 63,000 criminals were concluded, with a year-on-year increase of 32.4% and 28.6%. In 2017, about 56,000 cases and 76,000 criminals were concluded, with a year-on-year increase of 24.4% and 20.6% respectively. In brief, from 2013 to 2017, the number of embezzlement and bribery crimes tried by the court showed an upward trend, both in terms of the number of cases and the number of criminals involved. However, from the analysis of the data and information in 2018, the total number of various corruption cases was 28,000 and the number of individuals involved dropped to 33,000. It can be clearly seen that China has made great changes in the level of corruption crimes. In 2019, 25,000 embezzlement cases and 29,000 criminals were concluded, with a year-on-year decrease of 10.7% and 12.1%. In 2020, 22,000 embezzlement and bribery cases and 26,000 criminals were concluded, a year-on-year decrease of 12% and 10.3%.
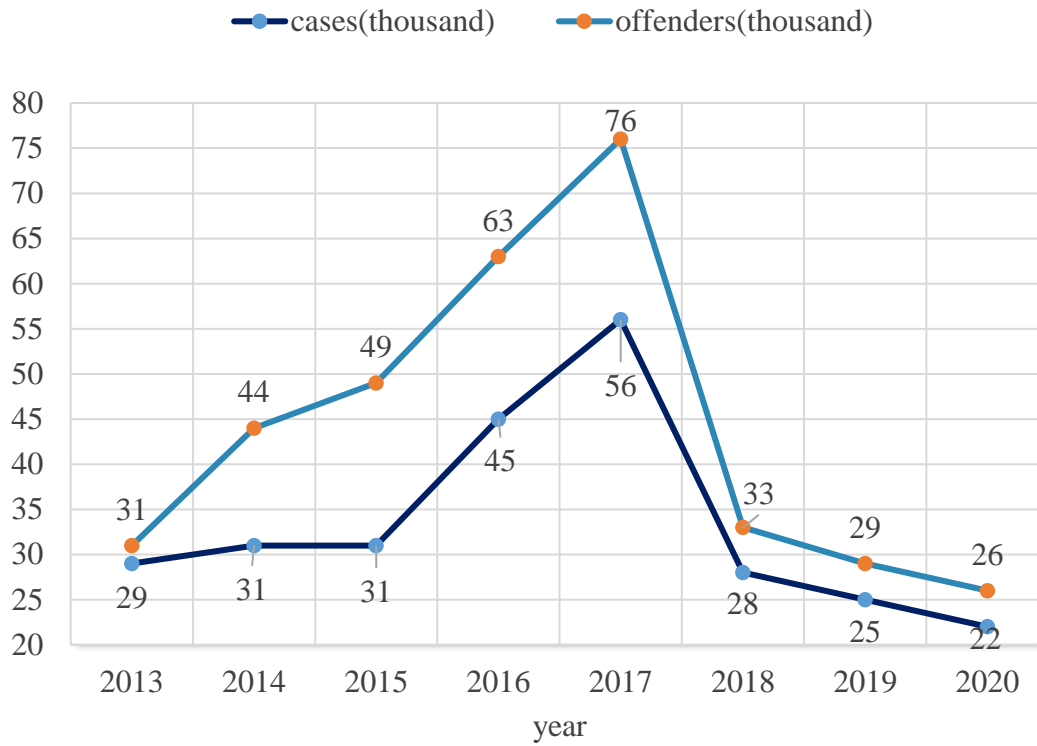
Figure 1 the trend of embezzlement cases in China

Since the 18th National Congress of the Communist Party of China, the crackdown on corruption has been strengthened. The revision of the conviction and sentencing standards of corruption crime in the Criminal Law Amendment (IX) enforced in 2015, as well as the interpretation on several issues of applicable law in handling criminal cases of embezzlement and bribery enforced in 2016 show the determination to governance corruption.

In recent years, the embezzlement cases concluded by the court show a downward trend year by year, which means that the application of new legislation has achieved certain results. While giving it positive evaluation, it should also be noted that the absolute number of embezzlement cases is still large at this stage, and the anti-corruption work should not be lax. As a quite serious type of crime in the current society, embezzlement has the necessity of in-depth exploration, which should be paid continuous attention and comprehensive reflection.

METHOD
I.1   Sample selection
All the judgments are collected from China Judgments Online (https://wenshu.court.gov.cn/). Through the advanced search engine of this network, the paper selects five conditions in turn, namely: case type (criminal case), year of judgment (2019), cause of case (embezzlement crime), court province (S province) and document type (judgment). Based on this, 219 judgments are selected, including 203 criminal first instance

judgments, 15 criminal second instance judgments and 1 criminal retrial judgment. It is found that 15 judgments belong to "other circumstances that the people's court deems inappropriate to publish on the Internet", and 2 judgments are repeated, so they are eliminated.

After that, in the process of carefully reading 202 judgments one by one and comparing the texts, five cases were charged with embezzlement in the prosecution stage, but the court finally decided to "misappropriate public funds" and "abuse of power", and another three cases were approved as embezzlement in the first instance. However, after appealing, the court of second instance revised the results of the first instance to define them as "official offence" and "private distribution of state-owned assets" and so on, and there is a large gap with other samples, so it is deleted.

Through a series of tests on the samples, the final number of samples is 194, including 181 first instance judgments, 12 second instance judgments and 1 retrial judgment.

Compared with other text specifications, the requirements for the content and format of the judgment are relatively high, and there are many contents that are difficult to be automatically recognized by intelligent devices of computers. Undoubtedly, this study pays high attention to variables: the amount of embezzlement, sentencing results, and criminal circumstances. Especially the amount of embezzlement, while in many cases it is clearly given, in some cases the total amount is still not counted in the final conclusion, and need to be traced back to the text of judgments. In order to make the statistics as accurate and precise as possible, such key information is manually verified by manual comparison.

It should be noted that in some judgments, more detailed information is recorded, involving nationality, gender, educational background, Party member status, etc. These informations are also entered in the sample statistics, but the missing value is too high. Such as "Party member status", only 43 judgments in the sample contained that. Such data were not representative enough, so they were not chosen to use in the cartographic analysis stage.

I.2   Question setting

Based on the needs of the research purpose, firstly, this paper designs the following four questions around the subject of embezzlement cases: 1. The distribution of the number of criminals in each age range; 2. Educational background of the offender; 3. Identity of criminal subjects; 3. Whether it is a joint crime. In this paper, the age range is divided into four groups: 26-35 years old, 36-45 years old, 46-55 years old, 56 years old and above. According to the educational level of criminals, this paper divides them into three groups based on Chinese education stages, namely high education, secondary education and compulsory education. As for the identity of criminals, this paper divides them into four categories. In order to facilitate the description and analysis of facts, they are briefly described, including staff of state organs, staff of state-owned enterprises or institutions, grass-roots public servants, and non-public officials (i.e. accomplices). For the question of joint or individual crime, after the completion of sample statistics, it is found that individuals of joint crimes ranges from 2 to 5. Therefore, according to the actual situation, the number of joint crimes is divided into 5 categories: 1, 2, 3, 4 and 5.

Secondly, this paper designs the following two questions around the objective aspects of embezzlement cases: 1. The means of illegal possession of public property; 2. Field of public property. According to Article 382 of the Criminal Law Amendment (IX), if state functionaries take advantage of their position rights to embezzle public finance or other people's private goods by defraud or steal, they will constitute the crime of embezzlement.

Therefore, this paper divides the means into four types: defrauding, encroaching, stealing and other means. With regard to the division of the amount of embezzlement, this paper adopts the classification standard of the official interpretation, and divides the amount of embezzlement into four stalls: 10,000-30,000 yuan (or only other serious circumstances), 30,000-200,000 yuan, 200,000-3 million yuan, 3 million yuan and above. According to the basic facts described in the judgment, the fields of embezzled state-owned property are divided in detail and summarized into 12 types: animal breeding, poverty alleviation and disaster relief, operation of state-owned enterprises / institutions, agricultural and forestry projects, debt / tax management, ecological governance, public security management, medical and health care, civil affairs subsidies, land acquisition and demolition, education and scientific research, construction project.

Finally, this paper designs the following two questions around the sentencing of embezzlement cases: 1. The number of embezzlement cases in different sentencing intervals; 2. Sentencing results comparison. There need to be highlighted that the specific length of sentencing is based on the fact that both criminal detention and fixed-term imprisonment are regarded as free punishment and principal punishment (*Zhou, 2020, p.47*). Next, with reference to the relevant provisions of the Criminal Law, this paper divides the length of declared punishment into three intervals, that is, less than 3 years (including 3 years); more than 3 years but less than 10 years (including 10 years); more than 10 years.

FACTS AND ANALYSIS

In the following part, this paper will describe the basic facts of the cases from the three dimensions, that is, subject of embezzlement, objective aspect of embezzlement, and sentencing results. Each part would be presented as the most intuitive tables and statistical charts as far as possible, and make a preliminary analysis to explore the possible explanation of this situation.

II.1   *Subject of embezzlement*

As shown in Table 1 and Figure 2, there are 253 criminals whose birth date is clearly recorded in the sample. The youngest was 27 years old and the oldest was 67 years old, with an average age of 47.2. Among them, the highest proportion is the group aged 46-55 (108 criminals, accounting for 43%), followed by the group aged 36-45 (85 criminals, accounting for 34%), then is the group aged 55 and over (39 criminals, accounting for 15%), and the group aged 26-35 (21, accounting for 8%) is the least.

age	number of criminals
26-35	21
36-45	85
46-55	108
56-	39
total	253
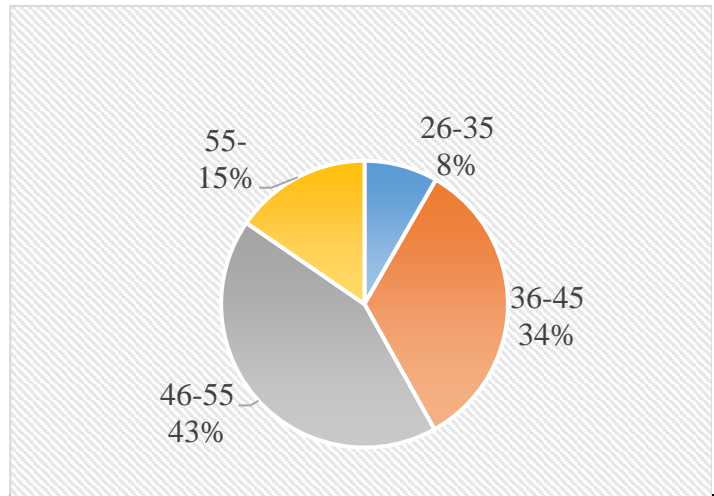
The education level can be summarized and classified as shown in Figure 3. The number of criminals which have received high education is the largest (157, accounting for 60.2%); followed by 53 criminals with secondary education, accounting for 20.3%; the number of criminals with only compulsory education is the least (51, accounting for 19.5 %). What needs to be added here is that, among all the cases in the sample, the 5 cases with the highest amount of illegal property, the offenders are all at high education level.
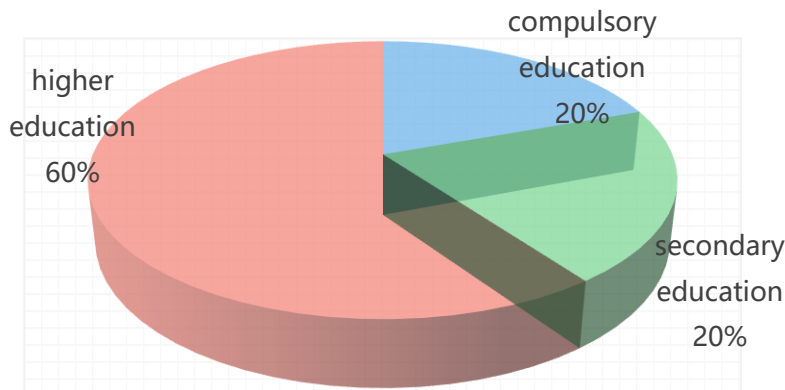
As shown in Figure 4, among the 261 natural criminals, the most two types of identities are the staff of state organs and grass-roots public servants, both of which are 84, accounting for 32.2%, followed by the staff of state-owned enterprises or institutions (69, accounting for 26.4%), and the least are non-public officials (24, accounting for 9.2%), which are only accomplices in joint embezzlement cases.
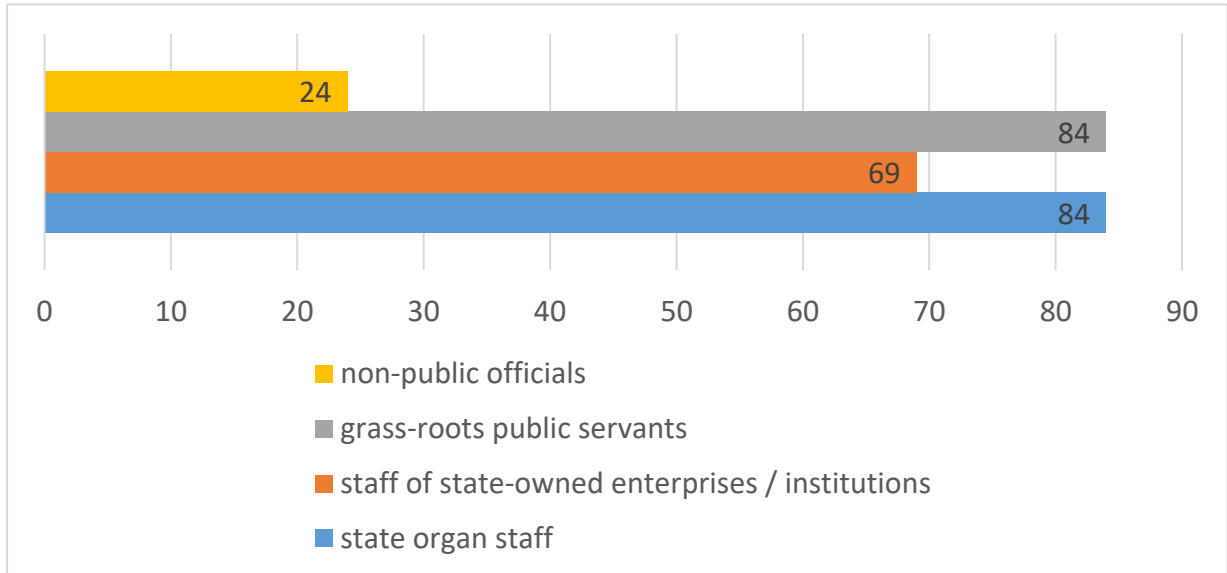

The typical view in theoretical criminal study is that, the subject of embezzlement crime is mainly represented by state agency staff *(Wang and Tang, 2002, p.25)*. Other individuals who are only entrusted by state-owned enterprises to manage and operate state-owned property, or those who do not have the status of state functionaries and engage in public service in accordance with the law are only regarded as the secondary subjects.

However, from the statistics of the sample, it can be seen that the subject identity of "grass-roots public servants" has become a really high-incidence group of embezzlement crimes. This group has just the same largest number of criminals as "staff of state organs", which are both 84. They assist the Government in public service in several kinds of grass-roots organizations such as villagers' committees, and they are also called "other public servants in accordance with the law".

For embezzlement, the most key issue is the so-called "right of access" *(Li, 2017, p.34)*, such as the accounting, cashier and documents of the villagers' committee or residents' committee, as well as the tax and fine collection of the village head and community leader. The reason why they have become the "hardest hit area" of embezzlement is not that these people are in high power, but that they are closest to national assets. And most of the embezzlers are special funds and materials such as preferential care, poverty alleviation and disaster relief. Therefore, its harmfulness is self-evident.

Table 2 and Figure 5 below disclosure the circumstances of individual and joint embezzlement. Among the 194 cases, 156 of them are individual embezzlement, accounting for 80.41%. 38 cases are joint crimes, accounting for 19.59%. Overall, the number of individual embezzlement cases is far more than that of joint ones.

In addition, two and three people is more commonly seen in joint embezzlement. 16 cases were committed by two persons, accounting for 8.2%, which is the same as the number and proportion of cases committed by three persons; The second is the case of joint crime by four people, with 5 cases, accounting for 2.6%. The least is the case of joint crime by five people, with only 1 case, accounting for 0.52%.
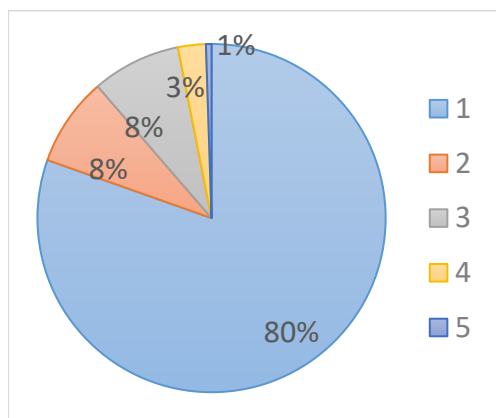
type	numbers of offenders	cases	proportion
individual	1	156	80.41%
joint	2	16	19.59%
	3	16	
	4	5	
	5	1	
total	261	194	100%

Some scholars pointed out that with the gradual improvement of various national systems, it will become more difficult for individuals to easily embezzle state property through institutional loopholes, but there are still opportunities to embezzle through collective cooperation *(Chen, 2019, p.101)*. However, sample statistics reveal a higher proportion of individual crimes. On the one hand, the implementation of embezzlement does not necessarily require a high financial level. Now the level of science and technology is developed. Some behaviors that are difficult for individuals to implement in theory can be easily solved with the help of computer operating system. On the other hand, embezzlement does not require several people to act together, and the "lone wolf" action is usually more hidden. In the sample cases, it is not uncommon for one person to hold several positions, especially in grass-roots organizations, the unclear division of work functions is more significant.

II.2   Objective aspects of embezzlement

The so-called "encroaching" is the use of illegal means to occupy the property of others or public organizations. In the criminal means of misappropriation of property, there are generally three specific acts: (1) it should be handed in but not handed in; (2) it should be recorded but not recorded in the account; (3) illegal resale or unauthorized gift. The word "stealing" is actually taking advantage of the convenience of one's position to steal secrets or property. The core of "defrauding" is to conceal the truth, such as the amount of travel subsidies falsely reported by business travelers, or the unit price of goods falsely reported by purchasers to defraud public funds. Such means are relatively easy to identify in judicial practice, but sometimes "encroaching" means will also have the process of fictitious facts or concealing the truth, but the fictitious facts or concealing the truth is to cover up the fact of embezzlement of public property.

As for now, there is no definite conclusion on "other means" in doctrinal interpretation, such as absconding after state functionaries misappropriate public funds, or accepting a large

amount of property in activities related to public affairs, and so on. Some scholars believe that "other means" should be considered as a "pocket" provision *(Zhao, 2013, p.54).*

In Table 3, among the 4 types of means of illegal possession of public property, the qualitative embezzlement cases of "defrauding" are the most (105, accounting for 54.1%), followed by "encroaching" (81, accounting for 41.8%), only 6 cases of "stealing", and 2 cases are classified as "other means".

means	cases	proportion
encroaching	81	41.8%
stealing	6	3.1%
defrauding	105	54.1%
other meas	2	1.0%
total	194	100%

It should be noted that, this table is made by combining the contents of the judgment with manual analysis and comparison. Actually, a considerable number of judgments is uncertain in the fact finding of "means of illegal possession of public property". Some judgments expressed it faintly, such as "the defendant took advantage of his position and illegally occupied public property, and his behavior has constituted the crime of embezzlement". Some judgments contained two means, such as "encroaching and defrauding public property". However, through reading and analyzing the cases, it can be found that, "defrauding" is sometimes only used as a cover-up act after encroaching public property, so it is more appropriate to just characterize its means as "encroaching".

In all, clarifying the specific means of illegal possession of public property is of great significance for the conviction of specific crimes. To some extent, judicial practice has encountered difficulties in determining means of embezzlement, which requires clearer and more persuasive explanation.

As shown in Table 4, according to the field of public property, the largest number of embezzlement cases is in the field of "state-owned enterprises / institutions operation", with 39 cases, accounting for 20.1%. Second, there are 34 cases in "construction projects", accounting for 17.5%. The third is "land acquisition and demolition", with 31 cases, accounting for 16.0%. The fourth is "civil affairs subsidies" (24 cases, accounting for 12.4%). The fifth is

field	cases	proportion	rank
Animal breeding	5	2.6%	9（parallel）
poverty alleviation and disaster relief	13	6.7%	6
enterprises/ institutions operation	39	20.1%	1
agricultural and forestry projects	19	9.8%	5
debt/ tax management	2	1.0%	12
ecological governance	3	1.5%	11
public security management	8	4.1%	8
medical and health care	5	2.6%	9（parallel）
civil affairs subsidies	24	12.4%	4
land acquisition and demolition	31	16.0%	3
education and scientific research	11	5.8%	7
construction projects	34	17.5%	2
total	194	100%	/

"agricultural and forestry projects" with 19 cases, accounting for 9.8%. Then followed "poverty alleviation and disaster relief" (13 cases, accounting for 6.7%). "Education and scientific research" has 11 cases, accounting for 5.8%. And then is 8 cases in "public security management" (accounting for 4.1%); There are both 5 cases in "animal breeding" and "medical and health care", accounting for 2.6% respectively. Only 3 cases in "ecological governance" (accounting for 1.5%) and 2 cases in "debt / tax management" (accounting for 1.0%).

As shown in Table 5, among the 10 cases with highest embezzlement amount of more than 3 million yuan (which is regarded as "particularly huge amount"), the field of "state-owned enterprises / institutions operation" also has the largest proportion, with 3 cases, accounting for 30%. "construction projects" and "medical and health care" fields accounting for 20% respectively. The other three belong to "land acquisition and demolition", "education and scientific research" and "agricultural and forestry projects", accounting for 10% respectively. The largest amount of embezzlement in the sample is 31.29862 million yuan, in the field of "construction projects".

embezzlement amount (**million yuan**)	field
31.29862	construction projects
15.1892	Education and scientific research
14.219766	medical and health care
8.144086	construction projects
6.905124	state-owned enterprises / institutions operation
6.679941	state-owned enterprises / institutions operation
4.887605	state-owned enterprises / institutions operation
4.015169	agricultural and forestry projects
3.506	medical and health care
3.1045	land acquisition and demolition

It can be seen that in fields such as the operation of state-owned enterprises / institutions and construction projects, not only embezzlement cases occur frequently, but also the amount of embezzlement is huge, which needs greater attention and stronger supervision.

II.3   *Sentencing results*

The Criminal Law in 1997 stipulated that whoever embezzles more than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than 1 year but not more than 7 years; Whoever embezzles between 50,000 yuan and 100,000 yuan shall be sentenced to fixed-term imprisonment of five years or more; If the amount of embezzlement is 100,000 or more, he shall be sentenced to life imprisonment or fixed-term imprisonment of 10 years or more, and the terms of imprisonment show a certain intersection. The Criminal Law Amendment (IX) is revised to a sentence without cross connection, and the three legal sentences are arranged in a ladder manner. As shown in Table 6, the degree of punishment from light to heavy is fixed-term imprisonment or criminal detention of not more than 3 years, fixed-term imprisonment of not less than 3 years but not more than 10 years, fixed-term imprisonment of not less than 10 years, life imprisonment and death penalty. The relevant interpretation establishes the starting point of the sentencing amount of the three grades of legal punishment, which are 30,000 yuan, 200,000 yuan and 3 million yuan respectively, which is 6 times, 4 times and 30 times higher than the amount standards in the old version of Criminal Law.

sentencing interval	amount of cases
<=3 years	193
3 ~10 years	57
>10 years	7

Table 6

	max amount (thousand yuan)	mix amount (thousand yuan)	margin (thousand yuan)
<=3 years	2925	10	2915
3 ~10 years	8144	193	7951
>10 years	31299	3506	27793

Among the 193 criminals sentenced to fixed-term imprisonment of no more than 3 years or criminal detention, the lowest amount of embezzlement is 10,000 yuan (the defendant is sentenced to criminal detention for 3 months and suspended for 6 months), while the highest amount is 2.925 million yuan (the defendant is sentenced to 3 years imprisonment and suspended for 4 years), and the margin is 2.915 million yuan. Among the 57 criminals sentenced to no less than 3 years but not more than 10 years of imprisonment, the lowest amount is 193,000 yuan (the defendant is sentenced to 3 years and 6 months imprisonment), and the highest amount is 8.144 million yuan (the defendant is sentenced to 9 years), with an extreme difference of 7.951 million yuan. Among the 7 criminals sentenced to more than 10 years of imprisonment, the lowest amount is 3.506 million yuan (the defendant is sentenced to 11 years), and the highest amount is 31.299 million yuan (the defendant is sentenced to 15 years), with a huge margin of 27.793 million yuan.

The results show that the judicial practice does not seem to be the ladder distribution of sentences as expected by legislation, but the phenomenon of "pile up" of sentencing. That is, courts in the same region may impose the same prison term on cases involving embezzlement of 200,000 yuan and 2 million yuan. For the problem of unfair sentencing, we need to view its essence through phenomenon. The space of the amount range contained in each sentencing interval of the crime of embezzlement is large, which directly leads to the current situation of "piling up" of sentencing. As shown in Table 12 above, in judicial practice, from 193,000 yuan to 8,144,000 yuan, although the amount of crime varies by 40 times, they are all sentenced within the range of 7 years of fixed-term imprisonment (in the interval of more than 3 years and less than 10 years). In other words, there will be cases with large differences in the amount of embezzlement, and the sentences would be very similar, or the sentences would be quite different in cases with similar or the same amount of embezzlement. If cases in the sample are represented by points and placed in the coordinate system with the horizontal and vertical coordinates of the amount of embezzlement and the term of imprisonment respectively, what should be displayed may be a scatter diagram, which would cause an unbalanced impression and lead to the inference of unfair sentencing.

In fact, the reason why the same amount of embezzlement corresponds to different sentences, or different amounts of embezzlement correspond to the same sentence, is that the

circumstances have been taken into account in the administration of justice. From this point of view, the implementation of the Criminal Law Amendment (IX) and relevant interpretations have indeed broken through the previous single standard of sentencing only based on amount to a certain extent, showing a dual sentencing mode of "giving priority to amount and secondary to circumstances".

CONCLUSIONS

Through the empirical analysis of samples, this paper reveals some characteristics of embezzlement cases. As far as the subject of crime is concerned, most of them are 46-55 years old, with high educational level. Many of them are state organ staffs and grass-roots public servants, and individual crime is more common. As for the objective aspects of crime, the means are often defrauding and encroaching. The high incidence of embezzlement takes place in the operation of state-owned enterprises / institutions, construction projects and so on. Moreover, the study also found the problems existing in the current judicial practice. For example, the nature of embezzlement means sometimes are faint, and unfair sentencing is an obvious issue.

Generally speaking, embezzlement crime is the result of the interaction of many factors, including imperfect legislative system, insufficient judicial punishment, unclear rights and responsibilities within the enterprises as well as institutions, and lack of effective external supervision. At the micro level, personal factors such as greed and fluke also count.

In the fairly near future, there is a long way to go to prevent embezzlement crimes. While affirming the new legislation has achieved certain results, we also need deep reflection that there are still deficiencies in its fairness and rationality, which calls for further constant adjustment and improvement in both legislative provisions and judicial practice.

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