Comparative study on the provision of criminal fine between China mainland and Macao special administrative reigon

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ABSTRACT

Since 1900's,most countries represented by jurists began to start a great campaign of the Non-penalization.

In this campaign, the Criminal Fine is one of the most important symbol of the Non-penalization. Since 20th century, the shortcomings of short-term imprisonment increasingly prominent.The character of "invalid deterrence and enlightenment, and limited time to be good but enough time to be evil" became the most common criticism of the short-term imprisonment. Accordingly, because of the special effects on the prisoner, the penalty of Criminal Fine gradually into the jurists' view of the most countries. Simultaneously, as the rapid development of global economy, money became more and more important in people's daily life. Whether it is engaged in investment or participated in various social activities,the actual freedom people enjoyed are very limitedwithout the help of money. As mentioned by Taiwan scholar Lin Shantian:"The centre of the suffering caused by the Criminal Fine is not to be forced to pay a certain amount of money, but rather the indirect result caused by the payment of fines which make people not meet the needs of material enjoyment."Therefore, with the rapid development of global economy, the effect of Criminal Fine becomes more and more prominent.

Although the criminal law between Macao special administrative region(MSAR) and China mainland(Mainland) both belong to the Continental law system, due to the different history ,and the special economic, geography environmental factor, they still have a lot of difference. The Criminal Law of MSAR is inherited the Portuguese law in the period of Portuguese rule. The design of of the system of Criminal fine is more perfect than the Mainland,it has a completed Criminal Fine system. In addition to basic rules, MSAR also has the detailed rules about the transformation of the

Criminal Fine and the time limitation of the penalty execution and other supporting system. Due to the special historical reasons, the Criminal Fine rule of Mainland seems to be rather rough, lacking of a complete and rational supporting system. And the question about "hard to enforce Criminal Fine" gradually became a great challenge which confused the Mainland's bar for a long time. Meanwhile, in Mainland, most of the ways about using the Criminal Fine are must-to-choose, and the amount of Criminal Fine doesn't have the minimum and maximum limitation. This approach is hard to escape the suspicion of the doctrine of severe punishment.The doctrine of severe punishment is not only to proceed in opposite direction of today's philosophy of penalty, but also not match the development of today's Mainland. As the Mainland's famous attorney TianWenchang said:"Mainland has trapped into a vicious circle between the crime and penalty which escalate in turn."Therefore ,it's necessary for Mainland to update the Criminal Fine system in order to solve the judicial dilemma about "hard to enforce Criminal Fine" in time.

Specifically speaking, this thesis will focus five aspects about the Criminal Fine between MSAR and Mainland: the status, the scope of application, the calculation methods, the manner of application and the execution system. By comparison under the different system perspective, to complement each other so as to promote both the development of Criminal Fine system.

KEYWORDS: The statue of Criminal Fine, The scope of application of Criminal Fine, The calculation methods of Criminal Fine, The execution system of Criminal Fine