

The Concept of Individualized Government Employees in the Criminal Law

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Abstract

In the 16th revision of the Criminal Law in Taiwan, the definition of the government employee has also been amended (Article 10 Sec 2). Nevertheless, this amendment still does not solve issues that have existed previously. The amendment, which has juxtaposed different kinds of concepts of the government employee, is in nature detrimental to restricting the scope of this concept. Unsurprisingly, after the amendment took effect, scholars and practitioners still have very different views regarding to the concept of the government employee, when they discuss this issue abstractly, or apply the concept to solve relevant cases. This article thus intends to raise a fundamental question about the methodology of this amendment: whether it is possible to have one definition for different kinds of offenses involving with the government employee in the Criminal Law. This article argues that according to the premise that the interpretation of individual offense shall hinge on the legal interest that each offense is involved, government employee conception in different kinds of offenses shall be different. That is, different kinds of offenses might define the government employee in the general, broad or strict term. If the legislator insists in giving a unified definition for different kinds of offenses involving with the government employee, the best way is to make it as broadest as possible, so that the judges can restrict the interpretation of the statute later according to the goal of the individual offense. But this article believes that it does not make any sense to define this concept in such an abstract and broad term. This article would rather argue that with respect to the concept of the government employee, it is

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preferable to individualize the concept. That is, the concept of the government employee in the individual offense should be defined according to the interests protected.

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