

刑事法遵之研究

Research on Criminal Compliance

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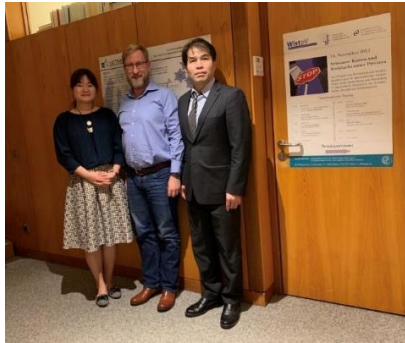
In Taiwan, “criminal compliance” is still an unfamiliar concept; it is often confused with concepts such as “compliance,” “legal affairs,” or “corporate governance.” While “compliance” usually refers to a corporate compliance program that aims to adhere to legal regulations, especially the administrative regulations, “criminal compliance” refers explicitly to adherence to criminal law and focuses on implementing compliance programs supporting the prevention and detection of crime. Unlike in the traditional criminal research field, where it is used to observe crime from a retrospective view and pursue crimes and punish criminals after an alleged infringement is reported, criminal compliance sees crime from a prospective angle. Therefore, it adopts a different approach to dealing with crimes. It focuses on analyzing risks related to criminal liability and establishes a risk prevention and response mechanism in advance. The aim is to prevent companies or individuals from becoming the target of criminal investigations, help them get out of litigation as soon as possible, or at least reduce or exempt from criminal liability.

We can use one prominent case to elaborate on the importance of criminal compliance in Taiwan: the Wong Chi-huey case. Dr. Wong, the former Academia Sinica President and an outstanding scientist, was accused of taking bribes from a biotechnology company. After three years of criminal investigation and trial, he was found not guilty of graft charge. However, he cannot recover from his loss of job and reputation. Given the burden accompanied by the criminal investigation itself (for example, search and seizure, account freezing, custody, restriction on travel abroad) and the enormous negative effects for the accused person (reputation damage, loss of job, labeling impact, etc.), it is necessary to express the uniqueness of criminal compliance and draw more attention to this new topic in Taiwan.

Because the Taiwanese criminal law system is based on the Continental European criminal law system, we believe that European research and experience would benefit Taiwan. In 2019, we visited Prof. Dr. Thomas Rotsch¹ at the University of Gießen,

¹ Prof. Rotsch is the pioneer and leading researcher in criminal compliance in Germany.

Germany, Dr. Marc Engelhart² of the Max Planck Institute for the Study of Crime, Security and Law in Freiburg, Germany, and Prof. Sabine Gless at the University of Basel in Switzerland³. Through expert interviews, we gained a lot of helpful information regarding criminal compliance and also built an academic network with outstanding experts in Germany and Switzerland.



We visited Dr. Engelhart at MPI in Freiburg



We visited Prof. Gless at the University of Basel

In 2019 and 2020, we held two conferences in Hsinchu and Taipei. The 2020 conference in Taipei has almost 100 voluntary attendees⁴. Ca. 60 % are legal practitioners, including judges, public prosecutors, managing partners of law firms, law clerks for the highest court, congressional assistants, police officers. The other 40 % are professors, doctoral and master students. It shows that our search has drawn high attention from academia and practice.



Host: Prof. Dr. LIN Yu-Hsiung at NTU



discussants



attendees

We are writing papers for publications in law journals. Besides, we started a new lecture this semester with “Economic Criminal Law and Criminal Compliance” to continue the research and spread this new approach of criminal law in Taiwan.

² Dr. Engelhart co-lead an empirical research project on compliance programs of German companies. He is also an expert in economic crimes.

³ Switzerland has regulated the liability of a corporation in criminal code

⁴ We didn't send any invitation letters.