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Chapter 33

Crimes Related to Labor Standards

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of the Labor Standards Act, Article 107, Article 7 (Prohibition of Forced Labor), Labor Standards Act, Article 107, Article 8 (Prohibition of Violence), Employment Security Act, Article 46, paragraph 1, subparagraph 1 (Forced Labor), Seafarers' Act, Article 167, subparagraph 3, Article 25-2 (Prohibition of Forced Labor), Labor Standards Act, Article 107, Article 9 (Elimination of Intermediary Exploitation), Employment Security Act Article 47, subparagraph 5, Article 32 (Prohibition of Receiving Money and Valuables, etc.), Seafarers' Act, Article 168, paragraph 1, subparagraph 5, Article 111 (Prohibition of Receipt of Money and Other Valuables), Labor Standards Act, Article 109, Article 36 (Settlement of Payments), Article 43 (Payment of Wages), Article 44, Article 44-2 (Joint and Several Responsibility for Payment of Wages in Construction Business), Article 46 (Shutdown Allowance), Article 56 (Extended, Night or Holiday Work), Act on the Guarantee of Employees' Retirement Benefits Article 44, subparagraph 1 and 2 (Failure to Pay Retirement Allowance), Act on the Protection, etc. of Temporary Agency Workers Article 43, subparagraph 3, Article 34, paragraph 2 (User Company's Joint and Several Liability), Minimum Wage Act, Article 28, paragraph 1 (Wage Less than Minimum Wage Rate), and the Seafarers' Act, Article 168, paragraph 1, subparagraph 1, 2, and 3 (Shipowner's Failure to Pay Wages), Article 170, subparagraph 3 (Shipowner's Failure to Pay Retirement Allowance).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | FORCED LABOR · INTERMEDIARY EXPLOITATION AND ETC.

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Forced Labor · Intermediary Exploitation and etc.	- 8 mos.	6 mos. - 1 yr.	10 mos. - 2 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense or its motive • An exceptionally insignificant degree of assault (forced labor and etc.) • Exceptionally insignificant amount of money and valuables received (intermediary exploitation) 	<ul style="list-style-type: none"> • Inflicting serious physical or psychological harm to the victim (forced labor and etc.) • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Vulnerable victims • Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visuals impairments (cases where the offender cannot be held liable) • Those with mental incapacity (cases where the offender cannot be liable) • Voluntary surrender to investigative agencies or whistleblowers • The offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> • Repeated offenses under the Criminal Act



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Passive participation • Cases where the offender failed to consume or retain most of the profit from the crime (intermediary exploitation) • Cases where the victim is also primarily responsible for the crime or extent of the damage 	<ul style="list-style-type: none"> • Premedicated crime • Malicious commission of the offense • Cases where the actual amount of profit involved by the crime is a large amount (intermediary exploitation)
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense exists

02¹ FAILURE TO PAY WAGES AND ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 50 million won	- 6 mos.	4 mos. - 8 mos.	6 mos. - 1 yr.
2	More than 50 million Won but less than 100 million won	- 8 mos.	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.
3	More than 100 million won	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. 2 mos. - 2 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special considerations could be taken into account on the circumstances of non-payment 	<ul style="list-style-type: none"> • Malicious non-payment • Inflicted serious harm to the employee • Vulnerable victims • Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity • Voluntary surrender to investigative agencies or whistleblowers • A substantial portion of damages was reversed 	<ul style="list-style-type: none"> • Repeated offenses under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Considerations could be taken into account on the existence or nonexistence or the scope of payment of wage and others 	
	Actor/ Etc.	<ul style="list-style-type: none"> • Expresses sincere remorse • A portion of damage was reversed • No prior criminal history 	<ul style="list-style-type: none"> • A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense exists



DEFINITION OF OFFENSES

01 | FORCED LABOR, INTERMEDIARY EXPLOITATION AND ETC.

1. FORCED LABOR AND ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE RANGE BY LAW
An employer forces an employee to work against their own free will through the use of violence, intimidation, and others	Labor Standards Act, Article 107, Article 7	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million Won
An employer do violence to an employee	Labor Standards Act, Article 107, Article 8	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million Won
A person who conducts job placement of, recruits or supplies workers, by means of assault, threat, and others	Employment Security Act, Article 46, paragraph 1, subparagraph 1	Imprisonment Not Exceeding 7 Years or Fine Not Exceeding 70 Million Won
A Shipowner or a seafarer coerce a seafarer to perform labor against their free will through battery, intimidation, and others	Seafarers' Act, Article 167, subparagraph 3, Article 25-2	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 50 Million Won

2. INTERMEDIARY EXPLOITATION

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE RANGE BY LAW
A person who intervenes in the employment of another person for making a profit or obtains benefits as an intermediary	Labor Standards Act, Article 107, Article 9	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million Won
A person who intends to recruit workers or a person who engaged in such recruitment work receives money or gains from applicants in connection with such recruitment	Employment Security Act, Article 47, subparagraph 5, Article 32	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 50 Million Won

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE RANGE BY LAW
A person who intends to employ a seafarer, a person engaged in job placement, recruitment, and etc., or a person engaged in labor and personnel management business of seafarers shall not receive money or benefits from a seafarer or person who intends to become a seafarer in relation to such job placement, recruitment, and employment	Seafarers' Act, Article 168, paragraph 1, subparagraph 5, Article 111	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million Won

02¹ FAILURE TO PAY WAGES AND ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE RANGE BY LAW
Violation of settlement of payments	Labor Standards Act, Article 109, Article 36	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Violation of payment of wages	Labor Standards Act, Article 109, Article 43	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Violation of the joint and several responsibilities for payment of wages for contract work by the immediate upper-tier contractor	Labor Standards Act, Article 109, Article 44	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Violation of the joint and several responsibilities for payment of wages in the construction business by the immediate upper tier contractor	Labor Standards Act, Article 109, Article 44-2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Failure to pay for shutdown allowances	Labor Standards Act, Article 109, Article 46	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Failure to pay for extended, night, or holiday work	Labor Standards Act, Article 109, Article 56	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won



ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE RANGE BY LAW
Failure to pay retirement allowance, benefits, contributions, and others	Act on Guarantee of Employees' Retirement Benefits, Article 44, paragraph 1, subparagraph 2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
Violation of the joint and several responsibilities for payment of wages by the user company	Act on the Protection, etc. of Temporary Agency Workers, Article 43, subparagraph 3, Article 34, paragraph 2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million Won
Paying a wage below the minimum wage amount	Minimum Wage Act, Article 28, paragraph 1	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million Won
A shipowner's failure to pay wages, and others	Seafarers' Act, Article 168, paragraph 1, subparagraph 1, 2, and 3	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million Won
A shipowner's failure to pay a retirement allowance	Seafarers' Act, Article 170, subparagraph 3,	Imprisonment Not Exceeding 2 Years or Fine Not Exceeding 20 Million Won

1. TYPE 1

- This indicates cases in which the amount of unpaid wages and others. involved does not exceed 50 million won.
- The unpaid amount indicates the total sum of the unpaid wages, retirement allowance, shutdown allowance, and others of one or several employees (This definition applies throughout the guideline).

2. TYPE 2

- This indicates cases in which the amount of unpaid wages and others. involved exceeds 50 million won but is less than 100 million won.

3. TYPE 3

- This indicates cases in which the amount of unpaid wages and others. involved exceeds 100 million won.

DEFINITION OF SENTENCING FACTORS

01 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OFFENSE

- This indicates cases in which one or more of the following factors apply:
 - Cases where the crime was committed because the refusal was unrealistic the circumstances, such as an order caused by the employment relations
 - Participation in the crime was forced by another person or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - When the offender merely agreed to participate in the crime but did not lead or actually participate in the commission of the crime
 - Other cases with comparable factors

02 | CASES WHERE THE DEGREE OF ASSAULT AND OTHERS WAS EXCEPTIONALLY INSIGNIFICANT (FORCED LABOR AND ETC.)

- This indicates cases in which one or more of the following factors apply:
 - The degree of assault, threat, or others was exceptionally insignificant that the degree of violation of the employee's free was insignificant (This excludes cases where the offense targeted vulnerable victims)
 - Offense caused relatively small actualized damages
 - Other cases with comparable factors

03 | CASES WHERE THE AMOUNT OF MONEY AND OTHER VALUABLES RECEIVED WAS EXCEPTIONALLY INSIGNIFICANT (INTERMEDIARY EXPLOITATION)

- This means that the amount of money and other valuables received is exceptionally low considering the relationship between the offender and the victim, the victim's wages, and the economical circumstances, and others.



04¹ VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE THE HARM)

- This indicates cases in which the offender expresses sincere remorse and the victim or the member of the deceased victim acknowledges this and objects to punishing the offender.
- This includes cases where deposits are made on a considerable amount of money comparable to reaching of an agreement with the victim or the family of the deceased victim as a result of the offender's genuine efforts to reverse the harm.

05¹ CRIME AGAINST UNSPECIFIED MULTIPLES OF VICTIMS OR PROLONGED AND REPEATED COMMISSION OF THE CRIME

- When convicted for concurrent crimes of the same kind of forced labor and intermediary exploitation, the offenses will not be considered as a multiple crimes but as a sentencing factor.

06¹ VULNERABLE VICTIM

- Vulnerable victim means cases where the victim was especially vulnerable due to reduced physical or mental capacity or age at the time of the crime and the offender was already aware of or possibly aware of the victim's such circumstances.

07¹ CASES WHERE THE VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE CRIME OR EXTENT OF THE DAMAGE

- This indicates cases in which one or more of the following factors apply:
 - Cases where the employee refused employer's reasonable work directions or performed ones duties illegally and caused damage to the employer or cases where the damage was to a substantial degree by certain causes attributable to the victim, in the course of the offender's offense or after the offense

- Cases where the victim delivered money and other valuables even though the victim was aware that the offender was employing, recruiting, or hiring by illegal solicitation and graft
- Other cases with comparable factors

08 | PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more of the following factors apply:
 - Cases where the labor was forced by illegal methods such as by making the false or counterfeited documents or by an act of deceit
 - Pretended or misrepresented as a person with influence on hiring, employee recruiting, or hiring and received money and other valuables
 - Abuse of relationships of trust
 - Other cases with comparable factors

09 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR THE CIRCUMSTANCES IN FAILURE TO PAY

- This indicates cases in which one or more of the following factors apply:
 - Failed to pay because of external factors that caused financial deterioration such as bankruptcy of a client or failure of payment from a client or immediately preceding contractor
 - Acquired the business that was already in a poor state of management
 - Other cases with comparable factors

10 | SUBSTANTIAL PORTION OF THE DAMAGE WAS REVERSED

- This means more than $\frac{2}{3}$ of the caused damage has been reversed or will be reversed with certainty.

11¹ FAILURE TO PAY WITH MALICIOUS INTENT

- This indicates cases in which one or more of the following factors apply:
 - Refused to pay for unjust reasons, although there is apparent duty to pay the wages
 - Failure to pay with priority to the employee even after receiving contract money from a client or immediately preceding contractor
 - The concealed executable property, pretended to be out of a business or used other person's name as business owner and operated same or similar type of company to evade duty to pay
 - Other cases with comparable factors

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01 | DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02 | DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.



GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01 | APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE SAME TYPE

- To calculate the sentence of an offender convicted of multiple offenses of failure to pay wages, the court shall apply the following principles:
 - ① In setting the sentencing range, calculate the total of unpaid payments, and select the sentencing range by considering all relevant factors.
 - ② However, after the total summation, when the applicable offense type is one level higher than the most severe single offense, then a reduction of $\frac{1}{3}$ is made to the minimum sentencing range. When the applicable offense type is two or more levels higher than the most severe single offense, a reduction



of $\frac{1}{2}$ is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense.

- For multiple offenses among forced labor, intermediary exploitation, or other type of wages, the multiple offenses of different type of offenses is applied as below:

04 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE DIFFERENT TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the different type that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the $\frac{1}{2}$ of the maximum sentencing range of the second offense.
 - ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense with the highest sentencing range, and (2) sum of $\frac{1}{3}$ of the maximum sentencing range of the remaining count with the second-highest sentencing range.
 - ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.
- However, when the offender is convicted of multiple offenses of wages or other types of unpaid payments of the same offense, first set the sentencing range for multiple offense conviction of the same offense for the unpaid payment and then use the resulted point range to calculate the sentencing range for different types of offenses.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

01 | FORCED LABOR, INTERMEDIARY EXPLOITATION AND ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Caused grave damage to the victim’s body or mentality (forced labor, etc.) • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Vulnerable victims • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense • The degree of assault and others was exceptionally insignificant (forced labor, etc.) • The amount of money and other valuables received was exceptionally insignificant (intermediary exploitation) • Voluntary surrender or whistleblowing • No prior criminal history • Victim opposes punishment (This includes genuine efforts to reverse the harm)
General Consideration Factor	<ul style="list-style-type: none"> • Cases where the actual amount of profit involved by the crime is a large amount (intermediary exploitation) • Particularly malicious commission of the offense • More than two incidents of suspension of sentence or more severe punishment • Premeditated crime • Lack of social ties • Absence of remorse • Active participation as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense • Absence of efforts to reverse damages 	<ul style="list-style-type: none"> • Cases where the offender failed to spend or retain most of the profit from the crime (intermediary exploitation) • Passive participation as an accomplice • No criminal history of the suspension of sentence or imposing of other sentences more severe • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender’s dependent family member • Offender expresses remorse • A significant amount of money was deposited or a substantial portion of damages was reversed



02¹ FAILURE TO PAY WAGES AND ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Failure to pay with malicious intent • Caused grave damage to the employee • Vulnerable victims • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Special consideration can be taken into account for the circumstances in failure to pay • A substantial portion of damage was reversed • Voluntary surrender or whistleblowers • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • More than two incidents of suspension of sentence or more severe punishment • Lack of social ties • Absence of remorse • Absence of efforts to reverse damages 	<ul style="list-style-type: none"> • Considerations could be taken into account on the existence or nonexistence or the scope of payment of wage and others • Offender expresses remorse • A portion of the damage was reversed • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.



ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of the sentence section comprehensively.