

Research on the Exclusion Rule of Illegal Evidence in Administrative Litigation

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Abstract

With the continuous development of administrative management, illegal evidence collection in administrative law enforcement has led to an increasing number of infringement cases, intensifying conflicts between administrative counterparts and law enforcement personnel, which runs counter to the concept of administration according to law. Administrative litigation involves the people's court examining the legality of administrative acts by taking the evidence of specific administrative acts as a clue. Whether evidence should be excluded as illegal directly affects the trial result, making this rule crucial in administrative litigation. Improving this rule is conducive to realizing the principle of respecting and protecting human rights and promoting procedural justice. The exclusion rule of illegal evidence itself contains important procedural values, prompting administrative organs to act more fairly in accordance with the law, enhancing law enforcement efficiency, and enabling judicial organs to resolve disputes more effectively. This paper comprehensively analyzes the concept and value of the exclusion rule of illegal evidence in administrative litigation, elaborates on its manifestations, and compares it with exclusion rules in other procedural laws to identify advantages and loopholes. Through analyzing numerous cases on China Judgments Online, it reveals that although the rule has constitutional and legal support, legislative ambiguities and lack of operability lead to practical issues. The paper proposes solutions from substantive and procedural perspectives to refine measures, promote the scientific development of the system, and contribute to the improvement of the rule of law.

Keywords

Administrative Litigation; Illegal Evidence; Exclusion Rule; Procedural Safe-guard

1. Overview of the Exclusion Rule of Illegal Evidence in Administrative Litigation

1.1. Concept of the Exclusion Rule of Illegal Evidence in Administrative Litigation

The exclusion of illegal evidence in administrative litigation, also known as judicial

exclusion, serves as a line of defense in administrative trials to protect citizens' lawful rights. With the development of law, the scope of application of the exclusion rule of illegal evidence has expanded, gradually penetrating into the field of administrative litigation.

The evidence system is the foundation of administrative litigation, playing a crucial role in theory and practice. Most countries with administrative procedure laws have stipulated evidence systems as the core of administrative procedure laws. The evidence system in administrative litigation covers a wide range of contents, such as the concepts of administrative law norms or evidence in litigation, the burden of proof, cross-examination, authentication, and standards of proof. In academia, there are many theories about the connotation of evidence. However, according to Article 50 of China's Criminal Procedure Law, "All materials that can be used to prove the facts of a case are evidence." Drawing on this provision, this paper defines evidence as various materials used to confirm the truth of a case during litigation.

It should also be clearly recognized that litigation evidence differs from other types of evidence. Litigation evidence usually refers to objective and true materials that can strongly support court judgments and conform to the legal attributes that evidence should have. Evidence refers to materials proving the facts of a case, including eight forms such as documentary evidence and physical evidence. The evidence system is an important part of administrative litigation. Evidence exists in both administrative law enforcement and administrative litigation, serving as an important basis for the legality of administrative acts and significantly influencing the outcome of administrative litigation. Generally, evidence in administrative litigation can be divided into two types, one of which is administrative evidence collected by administrative law enforcement departments in administrative activities as the basis for specific law enforcement activities.

Evidence has three properties: authenticity, relevance, and legality, among which legality refers to compliance with legal provisions. Illegal evidence violates the legality and authenticity of evidence. The research on the exclusion rule of illegal evidence focuses on evidence authentication rules, with the key being whether evidence is excluded as illegal. The 2014 amendment to the Administrative Procedure Law newly added Article 43, Paragraph 3, which formally defines "evidence obtained by illegal means" as illegal evidence in administrative litigation. The introduction of this provision helps better distinguish between illegal evidence and unlawful evidence. Illegal evidence tends to be obtained by illegal means, severely infringing on the legitimate rights and interests of counterparts. Unlawful evidence includes not only evidence obtained by illegal means but also evidence with illegal content, form, or exceeding the statute of limitations. A clear distinction between some unlawful evidence and illegal evidence is whether it seriously infringes on citizens' lawful rights and interests, which also puts forward different requirements for whether it can be transformed into legal evidence. For unlawful evidence, there

may be slight flaws in its manifestation. For example, if an administrative act has flaws and does not involve fundamental rights and interests, the administrative organ that made the administrative act can rectify the relevant matters. For illegal evidence, such as evidence obtained by violent law enforcement, which causes serious infringement on the legitimate rights and interests of the administrative counterpart, such evidence does not have any premise or possibility of transformation. Therefore, the 2014 law amendment provides more guarantees for the application of evidence in administrative litigation, helps safeguard citizens' legitimate rights and interests, improves administrative efficiency, strictly defines illegal evidence, and restricts the acquisition of evidence by illegal means, which is in line with China's actual situation and the original intention of the law. The Interpretation of the Supreme People's Court on the Application of the Administrative Procedure Law of the People's Republic of China implemented in 2018 makes its content more consistent with the general rules of excluding illegal evidence, better improving relevant regulations.

1.2. Specific Circumstances of the Exclusion Rule of Illegal Evidence in Administrative Litigation

In the field of administrative litigation, the relevant provisions on the exclusion of illegal evidence are based on the determination of illegal evidence. Although the exclusion rule of illegal evidence has gained an independent status in law, the relevant rules still need improvement. With the continuous development of the rule of law, China has issued a series of laws and corresponding administrative judicial interpretations in the administrative field to standardize the exclusion of illegal evidence in administrative cases.

1. Evidence Collected in Serious Violation of Legal Procedures

The manifestation of administrative organs collecting evidence in violation of legal procedures is that administrative organs collect evidence in violation of legal methods and authorities. When collecting evidence, administrative organs should strictly abide by legal procedures to ensure its legality; otherwise, it will be regarded as an illegal act. Although a unified administrative procedure law has not yet been issued, relevant laws and regulations should still be strictly observed to ensure the legality of administrative organs' acts and their exercise of powers in accordance with the law, thereby safeguarding social fairness and justice. When administrative subjects violate laws and regulations on law enforcement subjects and methods during law enforcement, they violate legal procedures. However, violations of legal procedures should also be distinguished, and not all evidence obtained through procedural violations should be excluded. According to relevant legal provisions, the Supreme People's Court has distinguished evidence materials obtained by administrative organs in violation of legal procedures according to the degree of violation: serious violation of legal procedures and general violation of legal procedures. In China's legal provisions, evidence materials collected in serious non-compliance with legal pro-

cedures should be excluded to ensure their authenticity and legality. For general illegal acts that do not cause damage to the parties, they should be distinguished from serious illegal acts. In general, Article 42 of the Administrative Punishment Law stipulates that administrative punishments should be handled by at least two law enforcement personnel and corresponding certificates should be issued.

However, if only one law enforcement officer is present, although this situation violates relevant procedures, it does not infringe on the legitimate rights and interests of the parties or lead to the untruthfulness of the evidence. Considering administrative efficiency and the authority of administrative law enforcement, such evidence may still not be excluded. However, if law enforcement officers fail to obtain and present law enforcement certificates as required by law during law enforcement and cause serious consequences to the other party due to illegal evidence collection, the evidence obtained in this situation should be excluded in judicial practice because this situation reaches the severity of procedural illegality, infringes on the rights of administrative counterparts, damages the authority of administrative law enforcement, and belongs to a serious violation of legal procedures.

Evidence Obtained by Unfair Means such as Inducement, Fraud, Coercion, and Violence

Means such as inducement, fraud, coercion, and violence are typical ways of illegal evidence collection in administrative litigation. Evidence obtained by such means will cause significant harm to the interests of the parties, even exceeding the bottom line of human morality. If evidence obtained by administrative agencies using the above methods is fully admitted, it will seriously damage the rights and interests of the parties and disrupt the normal operation order of administrative agencies. They can be divided into two categories: the first category is obtained by bad means such as inducement and deception; the second category is obtained by means such as coercion and violence. The most typical example of obtaining evidence by means of inducement and fraud is "fishing enforcement", which is a manifestation of destroying morality and undermining social order. "Fishing enforcement" is a typical example, whose actions and social order. "Temptation investigation" and "temptation evidence collection" have similar concepts in law. "Law enforcement entrapment" is a unique concept in the common law system, similar to concepts such as justifiable defense, and is an important basis for determining that the parties may be found not guilty. According to Paragraph 1 of Article 153 of the Criminal Procedure Law of the People's Republic of China, for, when necessary, upon the decision of the person in charge of the public security department, relevant personnel may hide their identities, but shall not use any means that may endanger public safety or cause major personal injuries for investigation. The 2009 fishing enforcement case in Shanghai is a representative example. To avoid abuse of power, we must take measures to exclude any form of improper means, such as coercion or violence. Through these measures, state power can be made to operate orderly within the track clearly stip-

ulated in the Constitution of the People's Republic of China, avoiding vacancies, overstepping, and dislocation. When administrative organs use violence, coercion, and other means to obtain evidence during law enforcement, they not only violate the basic content of the Constitution but also violate its basic principles. The admission of such evidence is not only standardizing the law enforcement behavior of administrative subjects but also protecting citizens' rights.

2. Judicial Status and Defects of the Exclusion Rule of Illegal Evidence in Administrative Litigation

After years of development, China's evidence rule system has made important achievements in evidence legislation. However, overall, such provisions still need to be strengthened to promote the reasonable construction of the evidence system. Administrative evidence plays an important role in administrative activities. Evidence is the basis for administrative subjects to make administrative acts and the premise of administration according to law. In the field of administrative litigation, the establishment of the exclusion rule of illegal evidence is a gradual process. Initially, the relevant provisions in this field were only simple prohibitive clauses, which later gradually rose to the legal level.

2.1. Judicial Application of the Exclusion of Illegal Evidence in Administrative Litigation

From a large number of judicial practices, it can be found that in the administrative field, regarding whether the evidence obtained by administrative organs should be excluded, China's judicial practice still lacks specific practical requirements meeting the exclusion rule of illegal evidence. In some cases, administrative counterparts can only accept the final judgment after the administrative organ's law enforcement decision, first-instance and second-instance judgments, or even reaching the retrial stage, which seriously reduces the efficiency of judicial trials and leads to a waste of judicial resources. The reasons for the parties to exclude illegal evidence can be divided into the following: infringement of legitimate rights and interests, violation of relevant laws and regulations, violation of legal procedures, etc. Regarding how to identify the exclusion of illegal evidence in administrative litigation in practice, combined with relevant legal norms and judicial interpretations issued by the Supreme People's Court, and analyzing specific cases, to study its practical situation, this paper searches with the keywords "exclusion of illegal evidence" and "administrative cases" on "China Judgments Online", finds a lot of valuable information, and records it. In the process of retrieval, most of the browsed cases are mainly "administrative second instance" categories, and the causes of action involve procedural violations, act violations, administrative detention, and many other aspects. It is found that there are problems in the judicial application of the exclusion rule of illegal evidence in administrative litigation, and the nature of the problems is clarified

through the study of relevant problems.

2.2. Problems of the Exclusion Rule of Illegal Evidence in Administrative Litigation

Through reviewing the judgment documents and the evolution of the relevant legal rules for excluding illegal evidence in administrative litigation, it can be seen that although China implemented the exclusion provisions for illegal evidence in administrative litigation very early, it is not difficult to find that China's laws mainly use general expressions for the relevant provisions, which give judges a relatively clear direction in court trials, but there is a situation of low operability in judicial practice. A large part of the reason is that the enforcement is not strong enough, and legislators have left many gaps in the legislation, resulting in the situation that the enforcement link is not fully connected with the legislation, and the expected effect of the legislation is not well reflected in the enforcement, thus there are also problems in judicial application.

3. Perfection of the Exclusion of Illegal Evidence in Administrative Litigation in China

3.1. Clarifying the Standards for Excluding Illegal Evidence in Administrative Litigation

Detailed explanations should be given on what constitutes "violation of legal prohibitive provisions" and "lawful rights and interests", and more targeted, practical, and operational methods should be adopted to specifically improve relevant regulations. Specific measures should be taken to formulate feasible regulations, expand the scope of interpretation of "lawful rights and interests" to meet different types of needs, and clarify the choice of interests when value conflicts occur among citizens' interests, social public interests, and national interests. Regarding the connotation of "serious", its specific meaning should be clarified. The standards of serious and non-serious are opposite, and different legal provisions have different definitions in different cases. When evaluating the degree of damage to the rights of administrative counterparts, it should be considered from two aspects: one is the impact analyzed from the substantive perspective, and the other is whether the corresponding rights of administrative counterparts are infringed in the administrative procedure. In order to better exclude illegal evidence in administrative litigation, relevant rules will make detailed lists of serious situations and set relevant comprehensive clauses, which will be supplemented with the relevant situations in social life, which can not only solve the problem of giving administrative organs discretionary power but also supervise them to prevent overstepping. In the understanding of the relevant concept of "reasonable doubt", we should extend the understanding of "reasonable", which should not only include the relevant content of legality but also include legal concepts such as legislative principles and purposes. However, at the same time, the

legislative department should also issue relevant regulations to better restrict the judge's discretion, prevent the occurrence of abuse of power, and avoid disturbing judicial credibility, such as restricting the field of exercising discretion and stipulating the scope and circumstances of application. Strengthen the detailed regulations on the punishment of administrative organs to ensure that the rights and freedoms of the people are fully protected. We must strengthen the supervision of administrative power, avoid abuse, improve the level of administrative management, and promote the whole society to respect, observe, and maintain the law.

3.2. Improving Procedural Legal Provisions

In view of the inherent characteristics of character evidence and the complexity The pretrial conference is an important part of the trial work, which helps ensure the concentrated, sufficient, and efficient progress of the trial process. In practice, the relationship between the pretrial conference and the court trial should be correctly grasped, and close cooperation should be achieved to maximize administrative fairness and efficiency. Judicial personnel should be trained in pretrial conferences so that they can better solve corresponding problems in court trials. With the development of the times and the continuous improvement of laws and regulations, the pretrial conference system has become more and more practical and can better respond to illegal evidence. In the process of litigation system reform, the importance of pretrial conferences has become more and more prominent, becoming an important link in reviewing the legality of evidence. Before the trial, the pretrial conference can be used as a preparatory step, which is carried out around the court trial of fair trial, and the pretrial conference should better serve the court trial. By making full use of the functions of the pretrial conference, the applicability and litigation efficiency can be effectively balanced, the tension of judicial resources can be relieved, and the rights of the parties to participate in litigation can be better protected, so as to achieve better judicial effects and solve the conflict between the pretrial conference and the trial in the scope of investigation. The Regulations on Pretrial Conference Procedures for Criminal Cases Handled by People's Courts (Trial Implementation) issued by the Supreme People's Court began to be implemented in 2018, emphasizing the importance of pretrial conferences. Effectively obtaining information, solving procedural problems before the real trial begins, making the focus of the trial more concentrated on substantive review, paying more attention to the characterization of the case and fact authentication, so as to promote the effectiveness and fairness of the trial. In China's criminal litigation, in order to ensure a fair trial, possible illegal evidence should be excluded before the trial to ensure the effectiveness of the fair trial. In the administrative field, in order to improve efficiency, we should refer to the relevant regulations in the criminal field, pay attention to the application of the pretrial review procedure, and clarify the application measures of the pretrial review procedure instead of simply "going through the mo-

tions".

4. Restricting Judges' Discretion

When facing different situations, judges should also make judgments according to corresponding standards on the basis of respecting the law. Judges shall not unconditionally apply illegal evidence only by means of interest measurement, value consideration, inner conviction, etc., but shall, in accordance with relevant laws and regulations, protect public interests and the legitimate rights and interests of others. For example, if a person's personal interests conflict with national interests, we should first consider national interests and provide reasonable compensation for this. The uncertainty of legal provisions creates space for discretion, but it does not mean that discretion has no clear standards. When exercising discretion, judicial organs should abide by a series of principles, including legality, impartiality, and prudence. Judges should also analyze and evaluate according to specific circumstances. While administrative organs exercise state power, if administrative organs cannot correctly perform their duties, they may seriously damage social interests and cause incalculable losses to the legitimate rights and interests of others. Get rid of the shackles of substantialism, establish the concept of due procedural justice, strengthen the ideological education of judges, broaden the thinking of judges, correct bad investigation and trial habits, strengthen the understanding of relevant rules, clarify their position as judges, so that the exclusion rule of illegal evidence can be realized, and procedural justice can be fully realized in judicial practice.

5. Conclusion

As an important system in the field of administrative litigation, the exclusion rule of illegal evidence and its improvement play an irreplaceable role in maintaining judicial justice, protecting citizens' rights, and standardizing the operation of administrative power. This study deeply analyzes the rule, reveals many problems in its theoretical and practical aspects, and proposes corresponding improvement paths, aiming to provide useful references for the development of the exclusion rule of illegal evidence in China's administrative litigation.

Current academic research on the exclusion rule of illegal evidence in administrative litigation still has deficiencies. Most studies focus on theoretical construction and legislative analysis, failing to fully combine with the actual situation of China's judicial practice. This leads to a disconnection between theory and practice, making many research results difficult to apply effectively in practice. Regarding the identification standard of illegal evidence, although there are differences between the broad sense and the narrow sense in the academic circle, in specific practical operations, how to accurately define "illegality" still lacks clear guidance. In addition, the academic research on the criteria for distinguishing the degree of illegality of evidence is not detailed and in-depth enough to meet the needs of judicial practice. The

exclusion rule of illegal evidence in administrative litigation faces many dilemmas. When applying the rule, courts have problems such as evasion of application, insufficient review, and unreasonable allocation of the burden of proof. These problems not only affect the fair trial of cases but also weaken the authority and credibility of the exclusion rule of illegal evidence in administrative litigation. For example, some courts fail to strictly exclude illegal evidence when facing it but accept it for various reasons, leading to the phenomenon of different judgments in the same case from time to time. At the same time, the phenomenon of illegal evidence collection in the law enforcement process of administrative organs repeatedly occurs, and there is a lack of effective accountability mechanisms, making it difficult for the exclusion rule of illegal evidence to play its due restraining role.

The improvement of the exclusion rule of illegal evidence in administrative litigation is a long and complex process, requiring the joint efforts of academia, legislative organs, judicial organs, and administrative organs. Through continuous research, exploration, and practice, this rule will be gradually improved to better adapt to the development needs of China's rule of law construction and provide a solid guarantee for achieving the goals of fairness and efficiency in administrative litigation. In the future, with the continuous advancement of China's rule of law process, the exclusion rule of illegal evidence in administrative litigation will also continue to develop and improve, playing a more important role in maintaining social fairness and justice and protecting citizens' legitimate rights and interests.

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