

The Practical Predicament and Improvement Path of The Two-Way Connection Mechanism Between Administrative and Criminal Law Enforcement In Our Country

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Abstract

The connection between administrative law enforcement and criminal justice is the core institutional design of the hierarchical governance of illegal and criminal activities and the closed-loop pursuit of legal responsibility in China, and it carries the important functions of solving the chaos of "substituting punishment for punishment" and "no punishment, no punishment" and maintaining the unity of the rule of law. With the revision and implementation of the Administrative Penalty Law in 2021, China officially established the two-way transfer system of administrative and criminal penalties, completing the institutional transformation from one-way positive transfer to two-way closed-loop connection. Subsequent supporting normative documents have been continuously refined, further consolidating the institutional foundation. However, in the current practical operation, there are still practical problems such as ambiguous substantive recognition standards, numerous procedural connection barriers, insufficient rigidity of supervision and restraint, and weak departmental synergy efficiency, which restrict the full release of the system's value. Based on the core content and normative system of the connection between administrative and criminal law enforcement, this paper sorts out the development context of the system, analyzes the practical bottlenecks and pain points, and proposes targeted improvement countermeasures for standardization, proceduralization and systematization to help build a two-way connection mechanism between administrative and criminal law enforcement that is full-chain, highly efficient and strongly supervised, and to enhance the level of legalization and refinement of social governance.

Keywords

Transition between execution and punishment; Two-way connection; Case transfer; Procuratorial supervision; Evidence conversion; Rule of law governance

1. Introduction

In China's multi-level legal liability system, administrative penalties and criminal penalties fall under the regulatory scope of administrative and judicial powers

respectively. Both are held accountable at different levels for different socially harmful illegal acts, together forming a complete system of illegal punishment. Administrative law enforcement directly faces the front-line governance areas such as market regulation, ecological and environmental protection, food and drug, and tax administration, with a large number of cases and complex illegal circumstances; Criminal justice, as a bottom-line guarantee, focuses on criminal acts that seriously endanger society and violate criminal law. The two are both independent and closely linked. For a long time, due to factors such as the division of powers, differences in standards, and insufficient coordination, there have been obvious operational disconnections between administrative law enforcement and criminal justice. In practice, either administrative law enforcement agencies refuse to transfer cases and use fines instead of criminal penalties, resulting in criminal acts evading criminal accountability; There are also cases concluded by judicial authorities that are not transferred to administrative authorities simultaneously, resulting in no accountability for acts that do not constitute criminal offenses but violate administrative legal norms, creating loopholes in penalties.

In recent years, with the further advancement of the rule of law in all respects, the modernization of the minor crime governance system and the standardization of law enforcement and justice at the grassroots level have become the focus of the rule of law construction, and the reform of the mechanism for the connection between administrative and criminal law enforcement has continued to accelerate. From top-level legislative design to local practice exploration, the two-way connection system has been continuously improved, but there are still standard disputes at the theoretical level and enforcement obstacles at the practical level. Clarifying the legal content of the two-way connection between administrative and judicial powers, rationalizing the process of rights and responsibilities, and solving the problem of coordination is not only the key to rationalizing the relationship between administrative and judicial powers, but also an inevitable requirement for improving the effectiveness of criminal governance, achieving proportionality between offense and punishment, and maintaining social fairness and justice. Based on this, this paper focuses on the entire process of the two-way connection between administrative and criminal law enforcement, conducts theoretical analysis and practical reflection, and explores scientifically feasible paths for improvement.

2. The legal connotation and normative basis of the two-way connection between execution and punishment

2.1. The core content of the two-way connection between execution and punishment

The connection between administrative law enforcement and criminal justice, also known as the connection mechanism between administrative law enforcement and criminal justice, refers to the working mechanism in which administrative organs,

public security organs, procuratorial organs and judicial organs, in the process of investigating criminal cases, in accordance with legal authority and procedures, realize the two-way flow of case leads, evidence materials and handling results, coordination of rights and responsibilities, and supervision and restraint. Compared with the traditional single forward transfer, the two-way connection places more emphasis on the full-process closed-loop management, specifically including two core dimensions:

First, positive connection, that is, when administrative law enforcement agencies discover in their daily supervision and law enforcement cases that illegal acts are suspected of constituting criminal offenses and beyond the scope of administrative penalty regulation, they transfer the case clues, all evidence materials, involved property, etc. to public security organs and procuratorial organs to initiate criminal prosecution procedures in accordance with the law and regulations, prevent administrative penalties from substituting criminal penalties, and safeguard the bottom line of criminal justice, Ensure that serious criminal acts are held accountable in accordance with the law.

Second, reverse connection, that is, during the handling of criminal cases by judicial authorities, for cases where decisions of non-prosecution are made in accordance with the law, judgments of exemption from criminal punishment are made, and cases that do not constitute criminal offenses but are indeed administrative violations are simultaneously transferred to the corresponding administrative law enforcement agencies, clear administrative penalty recommendations are made, and the administrative agencies are urged to perform their regulatory duties in accordance with the law, Avoid the penalty gap of "exemption from punishment" and implement the hierarchical pursuit of administrative violation liability and criminal liability.

2.2. Evolution of the normative system for the two-way connection between execution and punishment

The system of the connection between administrative law enforcement and criminal justice in China was not established overnight. It has undergone more than two decades of practical exploration, policy improvement and legislative confirmation, gradually transforming from fragmented norms to systematic construction and from one-way operation to two-way closed loop, which can be divided into three stages as a whole:

The first stage was the initial stage of the system (2001 -2010). In 2001, The State Council issued the "Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Agencies", which for the first time clearly defined the transfer obligations, transfer procedures and supervision requirements of suspected criminal cases by administrative law enforcement agencies, focused on solving the prominent problems of "not transferring cases and substituting fines for

criminal penalties" in practice, and initially established the institutional framework of positive transfer. The core of this stage was criminal accountability and safety net, It does not involve reverse connection content.

The second stage was the normative development period (2011-2020). The Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice and other departments jointly issued a series of normative documents to gradually expand the scope of the connection between administrative and criminal law enforcement, refine the supporting rules such as clue notification, evidence conversion and information sharing, and localities successively established joint meeting mechanisms for the connection between administrative and criminal law enforcement, and the connection process was continuously optimized. At the same time, both the theoretical and practical circles have begun to pay attention to the issue of reverse connection, and some places have carried out pilot explorations, but it has not yet risen to the national legislative level, and the institutional effect level is relatively low.

The third stage is the legislative finalization period (2021 to present). The Administrative Penalty Law revised in 2021 officially established the two-way transfer system, clearly stipulating that if an illegal act is suspected of being a crime, the administrative organ shall transfer it to the judicial organ in a timely manner; Where a judicial organ decides not to pursue criminal responsibility but should impose an administrative penalty, the judicial organ shall transfer the case to the administrative organ for handling in accordance with the law. Subsequently, the Supreme People's Procuratorate issued the "Guidelines on the Work of Reverse Connection between Administrative and Criminal Law Enforcement by People's Procuratorates", further detailing the scope of application, transfer procedures and supervision methods of reverse connection, forming a complete normative system of "law + departmental rules + normative documents", providing a solid basis for the regular operation of the two-way connection mechanism.

3. The practical predicament of the two-way connection mechanism between administrative and criminal law enforcement

3.1. Ambiguous substantive identification standards and inconsistent judicial determination

The boundary between administrative violations and criminal offenses is the prerequisite for the connection between administrative and criminal law enforcement. In most cases, there is only a difference in the "quantity" of social harm between the two, rather than a distinction in "quality". However, at present, there is a lack of unified and detailed determination standards, resulting in inconsistent judgment criteria in practice. On the one hand, the criteria for positive transfer are ambiguous. For high-incidence areas of administrative crimes such as

food and drug, ecological environment, and intellectual property rights, expressions like "serious circumstances", "large amount", and "serious consequences" in legislation are too general, and there are differences in understanding between administrative and judicial authorities. Some administrative authorities deliberately lower the criteria for determination out of considerations such as law enforcement assessment and case-handling pressure. Administrative penalties are imposed on cases that should be transferred; There are also cases of excessive transfer and the inclusion of ordinary administrative violations in criminal proceedings, wasting judicial resources. On the other hand, there is a lack of reverse connection application standards. The current norms do not specify the specific circumstances under which judicial authorities transfer administrative penalties or the rules for judging "penalty". In practice, the determination of transfer for cases with minor circumstances and little harm is highly subjective. Either excessive transfer increases the liability of the counterparty, or transfer that should be transferred is not transferred, resulting in penalty loopholes.

3.2. Poor procedural connection and low efficiency

The transfer of cases and the conversion of evidence are the core links of the connection between administrative and criminal law enforcement. Currently, the problems of non-standard operation and poor connection are prominent. One of them is the chaotic process of case transfer. In the forward transfer process, some administrative agencies have problems such as untimely transfer, incomplete materials, and failure to transfer the involved assets simultaneously; In reverse transfer, the procuratorial suggestions and judicial suggestions of the judicial authorities are general in content, lack clear penalty directions, the administrative authorities' responses are lagging, the adoption rate is low, and there is no compulsory restraint mechanism.

Secondly, it is difficult to break down the barriers of evidence conversion. There are differences in the collection standards, procedural requirements, and proof standards between administrative evidence and criminal evidence. Some administrative law enforcement evidence cannot be directly used as the basis for criminal case determination due to non-standard collection procedures and forms that do not meet the requirements of criminal proceedings; When criminal evidence is transferred in reverse, there are also problems such as incomplete transfer of materials and difficulty in obtaining them, which increase the cost of subsequent case handling.

Thirdly, the information sharing mechanism is weakened. Although various regions have established information platforms for the connection between administrative and criminal law enforcement, there are problems such as untimely data entry, incomplete information, and departmental data barriers, making it difficult to achieve full tracking of cases, real-time exchange of leads, and dynamic follow-up of

supervision.

3.3. Inadequate supervision and restraint, and weak implementation of the system

As a legal supervisory organ, the procuratorial organs are responsible for supervising the connection between administrative and criminal law enforcement. However, at present, the supervisory means are single and lack rigidity, making it difficult to play an effective restraining role. On the one hand, the methods of supervision are lagging behind, mainly post-event supervision, with the absence of pre-event early warning and in-event intervention supervision mechanisms, making it difficult to prevent problems such as not transferring cases and not investigating suppressed cases from the source; On the other hand, supervision lacks coercive power. For acts such as administrative organs' refusal to transfer cases, unjustified failure to adopt procuratorial suggestions, and failure to perform administrative penalty duties in accordance with the law, procuratorial organs can only put forward procuratorial suggestions and urge corrections, without direct disciplinary authority, and the cost of violation is extremely low.

At the same time, the mechanism of accountability for the connection between administrative and criminal law enforcement is not sound. For the acts of favoritism, malfeasance and dereliction of duty by case handlers that lead to the failure of the connection, the criteria for determining responsibility are ambiguous. In practice, accountability is merely a formality and is difficult to form an effective deterrent.

3.4. Weak departmental synergy and insufficient professional competence

The connection between administrative law enforcement and criminal justice involves multiple subjects such as administrative organs, public security organs, procuratorial organs and judicial organs, and requires multi-party coordination and cooperation. However, departmental collaboration is still fragmented at present. Mechanisms such as joint meetings and case consultations are often just formalities, and there is insufficient regularity in cross-departmental discussions on difficult cases, joint law enforcement, and business exchanges. There is a lack of efficient communication and resolution channels when disputes arise. At the same time, the connection between administrative law and criminal law, administrative procedure and criminal procedure, is an intersection of administrative law and criminal law, and requires a high level of professional ability from case handlers. However, in practice, law enforcement and judicial personnel are mostly proficient in a single field of legal knowledge and lack professional knowledge of the entire process of the connection between administrative and criminal law, and have inaccurate grasp of case characterization, evidence standards, and transfer procedures, which directly affects the quality and efficiency of the connection work.

4. The path to Improving the two-way connection mechanism between execution and punishment in our country

4.1. Unify the criteria for identifying entities and clarify the division of rights and responsibilities

To solve the problem of ambiguous standards for the connection between administrative and criminal law enforcement, the primary task is to refine the rules for identifying entities and eliminate differences in departmental understanding. The Supreme People's Court, the Supreme People's Procuratorate, and the relevant authorities of The State Council jointly issued guidelines for the determination of cases involving the connection between administrative and criminal law enforcement, set quantified demarcation standards for administrative violations and criminal offenses by category in high-incidence areas, and clearly defined specific determination indicators such as amounts, circumstances, and consequences to reduce discretionary space. For the reverse connection, a two-level review standard of "legality + necessity" is established. First, it examines whether the act violates administrative legal norms and whether it meets the legal requirements for administrative penalties. Then, based on the subjective malignancy of the act, the harmful consequences, the attitude of repentance, and the principle of proportionality between the offense and the penalty, it determines whether administrative penalties should be imposed to prevent arbitrary transfer and refusal to transfer. At the same time, the rules for offsetting penalties should be standardized, and the system of offsetting administrative detention against term of imprisonment and fines against fines should be strictly implemented to avoid repeated penalties and excessive accountability.

4.2. Standardize the entire process procedures and break down the connection barriers

Build standardized and regulated connection procedures to improve the efficiency of case circulation. First, refine the time limit and material requirements for two-way transfer, and specify that administrative law enforcement agencies should report within 24 hours after discovering clues of suspected crimes and transfer all case materials within 3 days; The judicial authorities shall complete the reverse transfer within 10 days after making a decision not to prosecute or to exempt from criminal punishment, stating the facts of the violation, the legal basis, and the penalty recommendation; Administrative authorities are required to provide feedback on the handling results within 90 days. If they do not adopt the suggestions, they must explain the reasons in writing. Second, establish an efficient evidence conversion mechanism, issue specific guidelines for evidence conversion, clarify the conditions for the application of administrative law enforcement evidence in criminal proceedings, standardize the reverse transfer process of criminal evidence, ensure that the evidence materials are complete and directly applicable, and reduce

duplicate evidence collection. Third, upgrade the information sharing platform, break down the data barriers among departments, enable the full online flow, dynamic early warning and full traceability of case leads, transfer processes and handling results, and strengthen the full-process supervision of cases.

4.3. Strengthen the rigidity of procuratorial supervision and improve the accountability mechanism

Strengthen the legal supervision function of procuratorial organs and build a full-chain supervision system covering pre-event, in-event and post-event. For major and difficult cases involving a large number of people, the mechanism of early intervention by procuratorial organs is implemented to guide administrative law enforcement agencies to collect evidence in a standardized manner and make precise determinations; Regularly carry out special supervision on the connection between administrative and criminal law enforcement, and promptly correct violations such as non-transfer, non-acceptance, and non-punishment. Give the procuratorial organs rigid supervisory powers. For departments that refuse to cooperate with supervision without justifiable reasons and fail to implement procuratorial suggestions, measures such as public criticism and accountability can be taken to urge rectification. Incorporate the connection between administrative and criminal law enforcement into departmental performance assessment to strengthen institutional binding force. At the same time, we will improve the accountability mechanism, clarify the circumstances and forms of accountability for violations such as dereliction of duty, favoritism and malpractice by case handlers, and hold them criminally responsible in accordance with the law for suspected duty-related crimes, to force the implementation of the system.

4.4. Deepen departmental collaboration and enhance professional capabilities

Establish a regular coordination mechanism to break down departmental barriers. Establish a joint conference system led by the government, dominated by the procuratorial organs, and involving multiple departments to regularly discuss difficult cases, sort out connection bottlenecks, and unify case-handling standards; Carry out cross-departmental joint training, cross-case handling, business exchanges, and promote two-way learning between administrative and judicial personnel to make up for professional deficiencies. Form specialized teams for the connection between administrative and criminal law enforcement, focus on handling various types of connection cases, and enhance the professional level of case characterization, evidence review, and procedural connection. At the same time, establish a typical case guidance system, summarize and release typical cases from various regions to provide a unified reference for practical case handling and enhance the standardization of overall connection work.

5. Conclusion

The mechanism of the two-way connection between administrative and criminal law enforcement is an important institutional support for coordinating administrative supervision and criminal justice and achieving stratified and precise governance of illegal and criminal activities. It is also a key approach to promoting the integrated construction of a law-based country, law-based government and law-based society. At present, China has completed the legislation of the system for the connection between administrative and criminal law enforcement, achieving a leap from one-way transfer to two-way closed loop, but the problems of standards, procedures, supervision and coordination in practice still need to be continuously solved. In the new era, to improve the two-way connection mechanism between administrative and criminal penalties, we need to be based on the core principles of unified rule of law, proportionality between punishment and offense, and efficient coordination, and build a full-chain closed-loop system with clear rights and responsibilities, smooth processes, strong supervision and accountability. Only in this way can we truly break the chaos of "substituting penalties for criminal ones" and "no penalties, no penalties", achieve seamless connection between administrative penalties and criminal penalties, comprehensively enhance the level of rule of law in social governance, and build a solid legal defense line for social fairness and justice.

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