

Thoughts on The Enactment of Laws and Regulations on Administrative Sanction of Military Public Officials

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Abstract: The formulation of the Law on Government Punishment of Public Officials is a major event in the history of building the rule of law construction in China, which is of great significance to strengthening the management and supervision of public officials and building a loyal, clean and responsible contingent of public officials. According to the authorization of the Law, the military shall formulate corresponding laws and regulations to regulate the government punishment of military public officials. The legislative basis is the Administrative Punishment Law and other relevant laws; the scope of military public officials includes active officers, civil cadres, civilian personnel, some non-commissioned officers and other military duties; the application of military administration and military disciplinary regulations shall grasp the principles of military characteristics, strict leniency, strict military law, government administration and disciplinary coordination, and wartime amnesty.

1. Introduction

The Law of the People's Republic of China on Administrative Punishment of Public Officials has been voted on at the 19th session of the Standing Committee of the 13th National People's Congress. Public staff government punishment law is a major event in the history of the construction of the rule of law in China, to strengthen the management and supervision of public officials, build a loyal and clean bear public staff, adhere to the principle of party cadres and effectively give full play to the leadership of the party, the greatest advantage of the system of socialism with Chinese characteristics to provide a strong legal guarantee.^[1] After the adoption of the Law on Administrative Punishment of Public Officials, the military shall formulate corresponding regulations to standardize the government punishment of military public officials, and provide a strong guarantee for strengthening the management and supervision of military public officials and purifying the ranks of military public officials. This paper talks about our own understanding and thinking on the legislative basis for the formulation of regulations on government punishment of military public officials, the scope of military public officials, the connection between the application of government punishment and military discipline punishment, and the principles that should be grasped in legislative technology.

2. Legislative Basis for Formulating Laws and Regulations on Government Sanctions of Military Public Officials

Article 66 of the Law on Administrative Punishment of Public Officials stipulates: "The Central Military Commission may formulate relevant specific provisions in accordance with this Law." This article is a legislative provision authorized by the law, which authorizes the Central Military Commission to formulate regulations on government sanctions for military public officials within the scope of the military. This is the direct basis for the military to formulate laws and regulations on government sanctions for public officials. In terms of science, legislative authorization legislation is one of the basic forms of legislative authorization by the NPC and its Standing Committee. The so-called law authorizes legislation, refers to the legislative activity of certain legislative power to

the relevant state organs to accept the authorized state authority in accordance with the authorization of this law.^[2] By authorized legislation, we can give full play to the initiative and enthusiasm of the authorized organs to conduct government administration to ensure the operability of the law.^[3] According to the law (the People's Republic of China on government action of public officials), the authorizer is the standing committee of the National People's Congress, authorized is the central military committee, the legislative power is "according to the relevant specific provisions of this law", according to the approval of the People's Republic of China on government action law (hereinafter referred to as the public government action law) in the military within the scope of the regulations.

It is not uncommon for the NPC and its National People's Standing Committee to directly grant legislative power to the Central Military Commission in the laws authorized by the law. For example, Article 86 of China's Government Procurement Law stipulates that "military procurement regulations shall be separately formulated by the Central Military Commission", and Article 68 of the Supervision Law stipulates that "the Chinese People's Liberation Army and the Chinese People's Armed Police forces shall carry out supervision work, which shall be formulated by the Central Military Commission with specific provisions in accordance with this Law". In order to grant the form to the central military commission on military affairs regulations, because the central military commission did not have the legislative power, and the national people's congress and the standing committee of national governance, based on the particularity of the military affairs, professional, technical, the national people's congress and its standing committee just authorized the central military committee on military affairs to make specific, detailed and feasible provisions. The military law norms formulated and promulgated by the Central Military Commission in accordance with the authorized provisions of the Law have the same legal restraint as the laws enacted by the National People's Congress and the Standing Committee.

In addition, the first paragraph of Article 2 of the Law on Government Punishment of Public Officials stipulates: "If a public official has illegal acts and needs to be given government sanctions, the disciplinary organ or unit shall give given administrative sanctions in accordance with this Law. Where the law provides otherwise, its provisions shall prevail." This article shows that if other laws have the provisions regulating the illegal government acts of public officials are inconsistent with the Administrative Punishment Law of Public Officials after adoption, the provisions shall be implemented by other laws. The "law" here refers to the basic laws enacted by the NPC and the ordinary laws enacted by the NPC Standing Committee. This article means that the laws containing the legal norms regulating the illegal government activities of military public officials are also the basis for formulating the regulations on government sanctions of military public officials. Such legal norms such as Article 34 of the Law of the People's Republic of China (hereinafter referred to as the Active Officers Law) stipulates that "an officer who violates military discipline shall be punished in accordance with the provisions of the Central Military Commission. Punishment are divided into: warning, serious warning, demerit recording, large demerit recording, demotion (grade), demotion, dismissal from the military and other sanctions prescribed by the Central Military Commission". With the deepening of the process of rule of law in China, more and more laws, and the problem of overlapping legal content is inevitable, which may bring conflicts. In order to avoid mutual conflict between laws, Article 92 of the Legislative Law of the People's Republic of China stipulates that if the special provisions of the same organ are inconsistent with the general provisions, the special provisions shall apply. This is true of the provisions of paragraph 1 of Article 2 of the Administrative Punishment Law of Public Officials, which reflects the principle that the special law is superior to the general law.

3. Scope of Military Public Officials

What is "public officials" is not defined either by neither the Supervision Law of the People's Republic of China (hereinafter referred to as the Supervision Law) nor the Law on Administrative Punishment of Public Officials. However, the Administrative Punishment of Public Officials lists the scope of public officials, Article 3 provides: "Public officials as mentioned in this Law, Refers to

the following personnel: (1) civil servants and personnel managed with reference to the Civil Servant Law of the People's Republic of China; (2) Personnel engaged in public duties in organizations authorized by laws or regulations or entrusted by state organs to manage public affairs according to law; (3) Administrative personnel of state-owned enterprises; (4) Personnel engaged in administration in public education, scientific research, culture, medical, health care and sports units; (5) Personnel engaged in management in grass-roots mass self-governing organizations; (6) Other personnel who perform public office according to law."According to this provision, military public officials belong to" other personnel who perform public duties in accordance with the law ".The Central Military Commission shall formulate the regulations on government sanctions of military public officials.

The basic attribute of "public officials" lies in their public authority and public service.^[4] A "public official" is someone who holds a specific authority of the state and uses that specific authority to perform a certain national administrative function or to provide public services. According to this concept, military public officials refer to military personnel who hold a military power of the state and use this power to perform the organization, leadership, command, supervision, management of the military or hold professional and technical positions. Some military laws and regulations define the identity of the state staff of some military personnel. As Article 3 of the Active Officers Act stipulates: " Officers are an integral part of state staff. Article 53 of "stipulates:" This Law shall be applicable to active police officers of the Chinese People's Armed Police Force,... "Article 2 of the PLA Civil Cadres Regulations (hereinafter referred to as the Civil Cadre Regulations) stipulates:" The PLA civilian cadre is appointed to professional and technical posts or above the junior level or above the clerk rank and is not awarded military rank, and is an integral part of the national cadre team."The People's Liberation Army of the People's civilian personnel regulations (hereinafter referred to as the civilian regulations) article 2 stipulates:" the civil personnel, refers to the military and civilian, not directly participate in combat and social security should not bear the military position engaged in management and professional and technical work of non-active personnel, is a part of the military personnel. Civilian personnel shall enjoy the corresponding rights and fulfill their obligations in accordance with their military and social life."These rules show that active service officers and police officers, civilian cadres, and civilian personnel are all military officials. Non-commissioned officers who hold administrative or professional and technical leadership and management positions other than vice-monitor and squad leaders, as well as non-commissioned officers, staff, assistant officers, who are either engaged in military management or hold professional and technical positions, are also public officials of the army. Also include other personnel who perform their military duties in accordance with the law.

4. The Connection between Government Sanctions of Military Public Officials and Party Discipline and Military Discipline Sanctions

At present, there are two situations: the violation of the PLA Discipline Order (CRAP), the first is subject to military discipline punishment; the second is that the military public officer is a member of the Communist Party of China, who be punished both as well as military discipline. After the promulgation and implementation of the regulations on public officials, public officials who have illegal acts are bound to be given government sanctions. Since the above three disposal measures are made by relevant units, Party discipline inspection organs and military supervision organs, it is inevitable that government punishment and Party discipline punishment, poor military discipline punishment connection and uncoordinated disposal.

4.1. The Connection and Coordination between Government Sanctions and Party Discipline Sanctions for Military Public Officials in Their Application

Party discipline and disciplinary actions shall be prescribed in general principles in the Party Constitution and supplemented and embodied by intra-Party regulations to form a system of discipline supervision laws and regulations with the Party Constitution as its core. The 19th National Congress of the CPC revised the Constitution of the CPC of China, made stricter provisions on

Party discipline, and stipulated that Party discipline is the rules of conduct that Party organizations at all levels and all Party members must observe. Party committees for discipline inspection at all levels are special organs for intra-Party oversight. Party discipline is stricter than the law and has higher requirements for Party members than for public officials. As for the connection and coordination of the application of government punishment and Party discipline punishment, Article 13 of the Law on Administrative Punishment of Public Officials stipulates: "Administrative punishment of public officials with the status of the Communist Party of China should generally be matched with Party discipline punishment....." is for illegal behavior and has the communist party of China military public officials, according to the provisions of the government regulations, and according to the disciplinary regulations of the communist party of China (hereinafter referred to as the disciplinary regulations) for disciplinary punishment, and the two kinds of punishments in the applicable type, not too light. In practice, the military supervisory organs and relevant units may investigate the illegal duties of military officials and the disciplinary examination of the Party discipline inspection departments may be carried out at the same time, or a joint investigation team may form a joint investigation team. According to the results of the investigation, the Party discipline inspection organs imposed Party disciplinary sanctions against Party discipline violations, and the military supervisory organs or relevant units imposed government sanctions against military public officials. When the two laws and regulations are inconsistent with the punishment of the same illegal act, the principle that Party discipline is strictly strict than the law and the priority of Party disciplinary punishment should be implemented, that is, the type of government punishment should be consistent with the type of Party discipline punishment. Because the advanced nature of the Party shows that Party members must first observe Party discipline, and the relationship between Party discipline and the law should fully reflect the principle of leading Party discipline.^[5]

4.2. The Applicable Connection and Coordination between Military Public Officials and Military Discipline Punishment

Article 3 of Article 11 of the Supervision Law stipulates that supervisory organs make government punishment decisions for public officials who violate their duties, indicating that government punishment has become a legal concept.^[6] So, can the government punishment of military public officials replace the military discipline punishment in the Discipline Order? The answer is no. First, the nature of the disposition is different. Government punishment is a disciplinary measure for the illegal acts of military public officials, is the legal way to investigate the law of illegal responsibility, essentially is the military organs (as military organs) on the illegal acts of their public officials; military punishment is a disciplinary measure by the military organs to violate the military discipline. Secondly, the objects of punishment are different. The objects of government sanctions are military public officials who violate government affairs, namely active service officers, police officers, civil cadres, civil personnel and some non-commissioned officers; the objects of military discipline punishments are disciplinary soldiers.

Military public officials have the dual status of state staff and soldiers. In practice, an illegal act may violate the government punishment regulations and the disciplinary order at the same time. How should we punish this? Article 65 of the nature of the Law on Administrative Punishment of Public Officials is authorization legislation. This authorization does not change the nature of the legislative power conferred by the Standing Committee of the National People's Congress. Authorized object of the central military committee in accordance with the authorization of the military public servants government punishment regulations, and authorized the standing committee of the National People's Congress of the public servants government punishment law has the same effect, because the authorized object of the central military committee of the National People's Congress in the military public government punishment regulations of agent. Mr Sun Guohua also thinks: "when a state authority authorized lower state organs to formulate within the scope of their own legislative functions, authorized authority within the scope of the laws and regulations in effect usually and with the authorized authority to formulate their own laws or regulations, but only authorized to formulate implementation rules."^[7] At the same time, Article 65

of the Law on Administrative Punishment of Public Officials is to authorize the Central Military Commission to formulate relevant specific provisions, that is, to formulate regulations on government punishment of military public officials, rather than implementation rules. Therefore, the regulations on administrative punishment of military public officials are at the same legal level as the upcoming implementation of the Administrative Punishment Law of the People's Republic of China (hereinafter referred to as the Administrative Punishment Law of Public Officials), with the same legal effect, of course higher than the Disciplinary Order formulated by the Central Military Commission. Based on the general legal principle that the upper law is superior to the lower law, when an illegal act of public officials of the military simultaneously violates the regulations and the provisions of the Disciplinary Order, the regulations on government punishment of military public officials shall be given priority. Only when the behavior of military officials is not regulated in the regulations on administrative punishment of military officials, and the Disciplinary Order is standardized, can the disciplinary order be given military disciplinary punishment.

5. Principles that should be Grasped in the Government Sanctions of Military Public officials in Legislative Technology

5.1. Army Features Distinctive Principles

As the benchmark law for government punishment of military public officials, the law on illegal punishment of military public officials should highlight their military characteristics in the norms of illegal behavior of military public officials. Central military committee in accordance with the "public government action law" legislative purpose, principles, spirit and the overall provisions of the government action applicable to the military public officials, according to the actual army to the specific provisions of detailed, technical supplementary provisions, also can not be confined to the text of the law itself, according to the actual army of the army internal special illegal circumstances into the scope of punishment. For example, some special illegal acts of military public officials not listed in the Law of the People's Republic of China shall be included, and government sanctions shall be given. These illegal acts include: negative operations, timid; wartime intentionally damage innocent residents, or intentionally violate the interests of residents; abuse of prisoners, insult, scolding, corporal punishment or disguised corporal punishment, etc.

5.2. Principle of Combining Mercy and Severity

The principle of combining leniency with severity is one of the basic principles of giving administrative punishment to public officials as stipulated in Article 5 of the Law on Administrative Punishment of Public Officials. "Wide" means "wide"; "strict" means "strict" and "strict". "Broad" is not to give kindness outside the law, nor is "severity" infinite aggravation. They should "help", that is, complement each other and adjust each other, and help with leniency and leniency. The purpose of the principle of leniency is to combine punishment with education; the essence is to evaluate the situation and differential treatment; the essence is fair, moderate, objective and comprehensive.^[8] It is true that the laws and regulations on government sanctions for military public officials implement the principle of combining leniency with strict measures, which requires a strict grasp of the scale of broad and strict measures, both in legislation and law enforcement. In order to maintain the high pressure of the military fight against corruption, promote military public officials to perform their duties in accordance with the law, use power impartially, and strengthen the management and supervision of military public officials, the principle of combining leniency and leniency should be applied to military public officials should focus on ensuring leniency and leniency.

5.3. Military Law

The army cannot stand, the law is lax. As we all know, "strict military law" has always been a feature of military law. The so-called strict military law, as the name implies, means that the legal consequences of violating the military law are more severe than violating the general law.^[9] Since the 18th CPC National Congress, President Xi has repeatedly stressed the strict governance of the

law, not only with the law, but also in accordance with the law, the minority and the "key contradictions". Seizing the "principal contradictions" and "key contradictions" in the military, other "secondary contradictions" can be easily solved. The Decision of the CPC Central Committee on Several Major Issues Concerning Comprehensively Promoting the Rule of Law adopted at the Fourth Plenary Session of the 18th CPC Central Committee clearly stipulates to "further govern the army under the law" and make "strict" the basic strategy of governing the army. Military public officials master the national military powers, perform the military organization, leadership, command, supervision, management functions or professional and technical position, is a "few" army ", "key contradiction", its illegal behavior is great harm to the army, only strict punishment to prevent, timely alert illegal military public officials, prevent its falling into the abyss of crime. Therefore, the principle of strict military law should be formulated on government punishment of military public officials. First, illegal acts in wartime should be severely punished. For example, if the following wartime illegal acts are serious, the punishment may be demerit recorded or even expulsion from the military: negative or timid, timid; wartime intentionally damage innocent residents or intentionally infringe the interests of residents; abuse of prisoners, etc. Second, we will appropriately increase the cost of violations. If in Article 29 of the Law on Administrative Punishment of Public Officials, rank, rank, post and staff level, title, salary can be added "but" after the promotion, rank, salary and treatment have a time limit, the period of administrative punishment shall not be included ". The original provisions amended to: "military public officials expelled from the government punishment, repentance during the punishment, no illegal behavior, automatically lifted after the expiration of the punishment, its promotion, position (rank), level, post and staff level, title, salary is no longer affected by the original punishment. However, if the promotion has a time limit, rank (rank), rank, rank, post and staff rank, title and salary level, the period of administrative punishment shall not be counted. The punishment of demotion or dismissal shall not be deemed to be restored to the original post, post (rank) level, level, post and staff level, professional title and salary." Because military public officials are promoted, rank (rank), level, rank and staff rank, professional title, salary level, there are generally time limit provisions, such as Article 17 of the Active Officers Law, Article 35 of the Civil Staff Regulations, etc. Such modification actually lengthened the government sanctions (except expulsion) of the military public promotion, rank), level, post and staff, title, salary level, the extended period and the government punishment, the heavier the punishment, its promotion, position (rank), level, post and staff, title, salary level the longer the period.

5.4. Principles of Government Action and Disciplinary Action Coordination

Previously, we discussed the connection and coordination between government punishment for military public officials and Party discipline and military discipline punishment. In fact, there are also problems of connection and coordination in legislative technology. Because military public officials have national public officials and soldiers, most also have the triple identity of the communist party member, how qualitative behavior, the behavior of violations should be what kind of punishment, the provisions of military public servants government punishment regulations shall be coordinated with the disciplinary regulations and the disciplinary order. First, the qualitative violation of laws and discipline should be consistent. Any violations of Party discipline and military discipline stipulated in the disciplinary action regulations and the disciplinary order shall be incorporated into the administrative punishment regulations of military public officials and given corresponding government sanctions. Second, the setting of the types of punishment should be coordinated. Article 7 of the Regulations on Disciplinary Punishment stipulates that there are five disciplinary punishments for Party members: warning; serious warning; revocation of Party posts; stay on Party probation; and expulsion from the Party. Article 112 of the Disciplinary Order stipulates that the punishment item of a non-commissioned officer is: warning; serious warning; demerit recording; large demerit recording; demotion or dismissal; reduced rank; expulsion from military service. Article 113 stipulates that the punishment items of an officer (civil cadre) are: warning; serious warning; demerit recording; large demerit recording; demerit recording; demoted

(level) or rank; rank; removed from post; expelled from military service. Article 36 of the Provisions on the Administration of Military Civil Personnel (Trial) stipulates: "Reward, commendation and punishment of civil personnel shall be implemented with reference to the relevant provisions of disciplinary articles and orders. Article 9 of " (Law of the People's Republic of China on Administrative Punishment of Public Officials) stipulates that the types of administrative sanctions of public officials are: warning; demerit recording; large demerit recording; demotion; removal from duty; dismissal. When the laws and regulations of military public officials set the types of government sanctions, the above punishments should be considered, so as to ensure that they can be scientific, reasonable, wide and strict, but also maintain the integrity and unity within the military law. It is suggested that the regulations of military public officials set the following punishments: warning; serious warning; demerit recording; large demerit recording; demoted (level) or rank (level); demoted; removed from duty; expelled from the military. After this setting, the warning and serious warning shall be the disciplinary warning; demerit recording, overrecording, demotion (level) or rank reduction (level) shall be the serious disciplinary warning; Party removal and probation; and expulsion from the Party. At the same time, this setting is also matched with the provisions of Article 13 of the Law of the People of the People's Republic of China on Administrative Punishment of Public Officials) that "Public officials who have Party members have been revoked from Party posts, under probation or expelled from the Party shall be dismissed from office or expelled according to law". Third, the principle of combining leniency and severity should be implemented in the setting of the punishment period. At present, neither the Disciplinary Punishment Regulations nor the Disciplinary Order stipulate the deadline for punishment. Article 10 of the Law of the People's Republic of China on Administrative Punishment for Government Officials) stipulates that "The period of public officials shall be: (1) warning, six months; (2) demerit recording, 12 months; (3) large demerit recording, 18 months; (4) demotion, withdrawal from office, twenty-four months." The interval between each punishment period is six months, which seems balanced, but does not implement the principle of combining leniency and severity. Warning and serious warning government punishment is the basic way of punishment for minor illegal acts, and the principle of "lenient punishment" should be reflected in the setting of its time limit. Therefore, when formulating administrative punishment regulations for military public officials, the period can be set to six and nine months.

5.5. Principle of Meritorious Service

Military law was prepared for the war. Under the specific conditions of wartime, in order to turn negative factors into positive factors, maximize the enthusiasm of soldiers, especially military personnel in leadership, management and professional and technical positions, and encourage them to kill the enemy for meritorious service, the law shall stipulate that military personnel who perform meritorious service should be praised. In addition to rewards, the military personnel can also be pardoned for minor illegal and criminal acts and not punished as illegal and criminal. For example, Article 449 of China's Criminal Law stipulates: "In wartime, when a criminal soldier sentenced to less than three years in prison without real danger is allowed to perform meritorious service and make meritorious service, the original sentence may be revoked and not be punished as a crime." This provision means that as long as criminal soldiers make meritorious service in wartime, they can blame in the past and revoke the original sentence, so as they no longer have the "criminal record" of the crime. When formulating laws and regulations on government sanctions of military public officials, they may draw lessons from this legislative example and stipulate that military public officials who have received government sanctions and have made meritorious service in wartime may be pardoned for administrative sanctions in light of their meritorious service and actual performance. One is to pardon some administrative punishment period, that is, to shorten the time limit of administrative punishment; the other is to pardon the administrative punishment, that is, the original administrative punishment, the original illegal behavior will no longer be regarded as illegal.

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