

Research on the Link between Criminal Law and Administrative Law

Pi Zhongxu

Hubei University of Police, Wuhan, Hubei Province, 430000, China

Keywords: Criminal law; administrative law; link

Abstract: Because of the overlapping of the object of adjustment and the criminalization of administrative malfeasance, administrative law and criminal law are closely related. The dependence of criminal law on administrative law is necessary to fully demonstrate the link of the two. In theory and practice, administrative violations and criminal offence are difficult to be defined in many cases, which has become an obstacle to the link between criminal law and administrative law.

1. Introduction

The research methods of law can be divided into internal and external observation methods from different perspectives. It is more convenient to clarify the complex relationship of criminal law by putting it into the system of jurisprudence. Criminal law is dependent on other department of laws, and there is a problem of link between department of laws. This paper expounds the personal views on the link between criminal law and administrative law, and provides reference for judicial practice and theoretical research.

2. Criminal law is closely related to administrative law

Compared with other department of laws, criminal law has the closest relationship with administrative law. It can be analyzed from the perspectives of the overlapping of investigation objects, the criminalization of administrative malfeasance and the common public law attributes. The criminal law protects all social relations that are infringed by crimes. It involves all aspects of social life. Administrative law regulates the extensive and important social relationships and it is closely related to civil rights. The content of administrative law ranges from administrative organization management to administrative relief, from civil administration to education and culture management. It covers and contains everything.

Specific to the law itself, taking public security management punishment as an example, it involves violations against public order control such as disturbing public order, violations of citizens' personal and property rights, etc. It is homogeneous with the legal interests protected by criminal charges. Behaviors that constitute a crime are prescribed in the Criminal Code[1]. The criminal law and administrative law have a wide range of adjustments, and there is overlapping in the object of adjustment.

The division of public law and private law is the basis of the legal order. Public law regulates the legal relationship between the state and citizens. The power of punishment is directly based on social ethical values. The essence of criminal law is to control power and should adhere to the administrative statutory principles.

The above ethics only proceeds from the external perspective of public law category that the criminal law and administrative law are common to. In terms of the applicable concept, both they are different from the autonomy of will of private law. It is necessary to investigate the illegal liability in accordance with the existing legal provisions. Punishment in administrative law insists on statutory punishment, which is the same as the principle of a legally prescribed punishment for a specified crime in criminal law. Both of them are forced to initiate the punishment procedure by the public authority for acts in violation of the stipulations. The purpose of punishing the offenders is to put emphasis on punishment sanction of the offenders. In order to limit the abuse of public power,

both of them stipulate that non-repeated penalty shall be imposed [2].

The academic community usually believes that serious violations become crimes. The difference between administrative violation and criminal violation lies in quantity. The abundant diversity of social life will lead to changes in the boundary criteria of administrative violation and criminal violation, which will lead to the phenomenon of criminalization. For a long time in our country, the main task of criminal legislation is criminalization. For example, the amendment to the Criminal Law criminalizes administrative violations such as leading pyramid selling activities, holding forged invoices and malicious wage arrears.

3. Criminal law is dependent on administrative law

The criminal penalties of administrative offenders depend on the provisions of the administrative law. Specifically, defining the connotation of some concepts and terms requires the aid of administrative laws and regulations. The application of blank facts about a crime needs the help of relevant administrative regulations. The administrative disposition procedure is a prerequisite procedure for the identification of certain crimes. The determination of hindering particulars of a matters illegally needs the help of administrative permission of administrative organizations[3].

The Criminal Law Amendment added a new definition of the concept of drunkenness in dangerous driving offence. It must rely on the relevant administrative regulations. The current administrative regulations stipulate that the drunkenness standard is more than 80 mg per 100 ml of blood alcohol. A motor vehicle is a wheeled vehicle driven by a power device for people to take or transport goods. Article 130 of the Criminal Law regulates the scope of controlled knife. The scope of inferior drugs in Article 142 shall be subject to the provisions of relevant administrative laws.

Blank facts about a crime are important symbols of administrative offenders. The state pursues an active policy of intervention. China's provisions on crimes are mostly based on the pattern of blank facts about a crime. The expression in legal language is that if you violate the management regulations and cause grave consequences and serious injuries. Some guiding provisions have also been made in the Administrative Law. For example, the Food Safety Law stipulates that the provisions of this law shall be regulated and criminal responsibility shall be pursued according to law. The criminal law does not directly stipulate the constitutional elements of the crime, it is necessary to identify such an administrative offence by the help of administrative regulations [4].

Article 276 of the Criminal Law stipulates that the crime of malicious arrears of wages can only be convicted after the confirming of the actions of refusing the payment by the relevant government departments. Article 153 stipulates that if the offender is given administrative punishment for a second smuggling within one year, it shall be the crime of smuggling ordinary goods. Administrative disposition procedure is the pre-procedure for the conviction of malicious arrears of salary. Such cases include the crime of disrupting the order of radio communication management in Article 288 of the Criminal Law and the crime of illegal growing of drug plants. There are also such examples in judicial practice. For example, the offender's violation of duty of care is replaced by the determination of accident liability in the "Traffic Accident Liability Report". Other types of liability accidents are confirmed in practice by the administrative organizations such as safety supervision.

There is an administrative criminal in the criminal law that does not have an administrative license as a premise of a crime. For example, if you set up a commercial bank, a futures exchange, a futures commission merchant or other financial institution without authorization, you will be punished by..... Administrative law scholars believe that administrative licensing is an administrative act that gives the administrative counterpart a certain legal qualification. That is, the acts that qualified with the administrative licenses should hinder the conformity of the condition.

Administrative licenses are divided into controlled and special licenses. The purpose of controlled licensing is to increase public credibility. The controlled licensing hinders the conformity of the condition. The law gives the parties the right to engage in acts prohibited by law. Implementing it after obtaining permission can prevent the illegality.

4. Problems in the cohesive mechanism between criminal law and administrative law

There are some problems in the link between criminal law and administrative law, such as the lack of coordination in terms, the conflict between criminal responsibility and administrative responsibility and the interruption of the link between criminal justice and administrative justice. There are many administrative violations. If the circumstances seriously violate the criminal law, the provisions of the criminal law and the provisions of the administrative law should be coordinated. There is a lack of coherence between some provisions of criminal law and those of administrative law. Criminal law and administrative law have different definitions on the same behavior. The cohesion difference between the prosecution standard and the actual situation affects the transfer of suspected criminal cases.

In the current legal provisions, the docking of criminal responsibility and administrative responsibility is mainly to write them in the same legal clause and to stipulate two forms in different terms. Because the provisions of the criminal law and the provisions of the administrative law are not connected, the administrative responsibility and criminal liability provisions are difficult to correspond.

The link between administrative enforcement of law and criminal judiciary refers to the cooperative system of dealing with cases in which all relevant departments perform their duties and cooperate with each other to ensure that criminal suspects are investigated according to law. In judicial practice, the loss of cases in the link between administrative enforcement of law and criminal judiciary is serious. There have also been many problems in the transfer of cases of administrative enforcement of law to those of criminal judiciary.

In the current law enforcement system in China, law enforcement agencies usually perform their duties. The same criminal case is often involved in multiple law enforcement agencies in judicial practice. Administrative law enforcement agencies often lack criminal legal knowledge in identifying crimes and non-crimes, appraisal and preservation. Due to the fact that law enforcement officials are not familiar enough with the criminal constitution, some criminal suspects who have violated the criminal law would not be criminally investigated in the handling of specific cases.

The legislative power of criminal law belongs to the National People's Congress and its Standing Committee. The legislative subject of administrative regulations is the State Council. The legislative power of criminal law is relatively concentrated. The legislative power of administrative regulations is relatively decentralized. The main purpose of administrative legislation is to enforce the legal provisions. In judicial practice, many department legislation only proceed from the interests of the department, neglecting the provisions of the criminal law, which makes the inconsistent stay in the administrative regulations and the criminal law. There are some legal provisions in the procedural law, but the provisions are not effective.

In addition to the imperfect law and the imperfect system design, the key factor of the cohesiveness of the two laws is the difference in understanding the concept. Some administrative agencies do not recognize the behaviors of the perpetrators violating the administrative law while violating the criminal law. Some law enforcers do not know enough about the criminal legal norms and convict cases wrongly in law enforcement, resulting in improper punishment. Some cases will not be transferred to criminal proceedings because of the interests of law enforcement agencies. For example, Law enforcement activities such as performance appraisal involve the interests of the departments or law enforcement personnel. Many cases that should be brought into criminal procedure are degraded in administrative law enforcement. Law enforcement agencies have insufficient understanding on the importance of the convergence of the two laws and condone the illegal behaviors of criminals, weakening the effect of the two laws in reasonably combating crimes.

5. The boundary between administrative violation and criminal offence

5.1. There is no approach of demarcation between the competitive and cooperative relationship

How to distinguish a harmful behavior from a crime or an administrative violation is a difficult

problem in the judgment of jurisprudence theory and practice. Legislation and judicial interpretation cannot fully define the quantitative factors of most crimes[5]. At present, there are two different attitudes about this in the academic community, one is to try to explore the unified theoretical boundary standards for the crime and administrative violations, and the other is to abolish the quantitative provisions of crimes. The author thinks that the actual state of the two boundaries in the current law should be studied and analyzed.

There is no approach of demarcation of competition-cooperation relationship. There are mainly the protection of important legal interests for criminal law, which excludes the application of administrative law. Since some crimes are related to the importance of legal interests, the prohibitive provisions in administrative law only play a guiding role in the application of criminal law. For example, the state strictly controls firearms and prohibits any individual or unit from holding, manufacturing or trading firearms in violation of the law. Any act of manufacturing or transporting firearms becomes a crime. Another example is the prohibition of illegal production, transportation, possession of narcotic drugs and precursor chemicals. Such administrative criminals may be given criminal sanctions for the administrative malfeasance, that is, acts of committing crimes.

The severity of criminal law determines the application of penalty is the last choice. Modern society is an administrative management, and it is necessary to take corresponding identification measures for individual citizens. The rented house does not register the tenant's identity information as required, which violates the provisions of the resident status law, but the penalty does not respond to this. Drug abuse, prostitution, naked bodies in public places, and theft of motor vehicles from others can only be punished by administrative penalty.

5.2. Criteria for the rational distinction between crime and administrative violation

A non-violation may be a crime or administrative offence. The legislative legislation on crime and administrative violations is divided into two categories: taking the difference of components as the criterion of demarcation and taking the circumstances of crime as the criterion of demarcation. Administrative punishments for public security stipulate that acts such as disturbing the working order of state organs shall be subject to administrative penalties. Article 219 of the Criminal Law stipulates that penalties shall be imposed for acts that disturb the order of the public places and social order. The difference between the two is whether the components are gathered together. The social harm of gathering people to implement illegal activities is generally greater than the illegal activities implemented by individuals. Therefore, the way of demarcation is reasonable.

Circumstantial crime requires that the harmful act should reach a certain degree of severity before it becomes a crime. The description of the crime appears in the form of serious consequences of the plot. The amount crime is convicted by the amount involved in malfeasance. For example, act of picking a quarrel and making troubles such as gang fighting will be given administrative punishment according to punishment in respect to management of public security. However, if the circumstances are bad and the order in public places is seriously disordered, it shall be convicted and punished according to the criminal law.

5.3. The boundary situation that is prone to divergence

The boundary situation that is prone to divergence mainly includes the determination of the behavior in the case of blank facts about a crime and the identification of the harmful behavior not enumerated in the criminal law. In the case of identical component, the unification of legal attributes of acts means that administrative violations or crimes should be mutually exclusive. Some scholars believe that criminal law is applicable when other department of law cannot respond effectively. Judicial personnel should make a substantive interpretation of the criminal law. The criminal law is used when the degree of behavioral hazard reaches the penalty. Administrative penalty should be considered only if it does not become a criminal offence. If it does not become a criminal penalty, it shall be considered based on the provisions of the criminal law.

At present, criminal legislation adopts blank facts about a crime as a component of administrative detainees, and divergence is easy to arise in the identification. Administrative violations are only the premise of administrative crimes, not the administrative crime itself. Acts

that cause serious harm to the protection of legal interests in criminal law can enter the field of criminal law. Otherwise, ordinary administrative violations can be punished as criminal attempt.

It is worth pondering to use the criminal theory to convict accomplice or discharge crime about acts that are not stipulated in the criminal law and are related to the act of committing crimes. There is no corresponding administrative law on the trafficking and forgery of university academic qualifications. Article 280 of the Criminal Law stipulates that those who forge the seal of institutions of higher learning for making academic qualifications shall be convicted of crime of forging seal of public institution. Those who know that it is academic selling made by forging seals of institutions of higher learning should be convicted as forgery accomplices. It is against the legal impartiality to assume different legal responsibilities due to different types of false certificates. Therefore, the legally prescribed punishment of criminal law configures the falsification of the identity card of the resident has more legal responsibility than the forgery of the seals. This law is hard to convince the public.

6. Conclusion

The criminal law is a law that stipulates crimes and penalties, and it is the guarantee for realizing the legislative purposes of administrative law. Inevitably, there is an area of convergence with administrative law on the object of adjustment. Criminal law requires stability. It is not in accordance with the characteristics of criminal law to be changeable and pursue new of the new administrative obligations. In the process of China's society turning to the market economy, the revision of the current criminal law provides universal protection for the realization of administrative law. However, there is always a gap between administrative enforcement of law and criminal judicature in China. Legislation follows the beaten track has led to legislation lags behind crimes. The research on the theory of administrative enforcement of law and criminal judicature is helpful to examine the legislative practice of criminal law and administrative law in China from a new perspective, to link administrative law with criminal justice smoothly, to make the administrative organizations and office of the public prosecutor to be reasonable and jointly safeguard the public interest, and to make the concept of law-based administration deep into the mind of the people, thus improving the development environment and promoting the further development of the market economy.

References

- [1] Hongshan Yuan. On Legislative Coordination of Administrative Law and Criminal Law——The Crime of Dangerous Driving as the Example[J].Journal of North China University of Water Resources and Electric Power(Social Sciences Edition),2017,33(04):88-91.
- [2] Jichun Wang. On the Linking between the Environmental Administrative Law and the Environmental Criminal Law[J].Journal of Lianyungang Teachers College,2015,32(01):6-9.
- [3] Liyun Zhu. Analysis on the Coordination and Connection Mechanism of Criminal Law and Administrative Law [J].Legal System and Society, 2014(30):24+28.
- [4] Yuanbin Jiang, Shuguang Yang. On the Connection of Criminal Law and Administrative Law [J]. People's Procuratorial Semimonthly, 2014(03):70-73.
- [5] Xue Chen. Coordination and Link between Criminal Law with Administrative Law——Case in Mental Health Law [J].Journal of QiLu Normal University, 2013, 28(06):63-66+83.