

## **Analysis on the Connotation of Prosecutorial Supervision of Illegal Administrative Actions**

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**Abstract:** Administration by law is the only way to build China under the rule of law. It is the division of labor, supervision and cooperation mechanism between administrative power and prosecutorial power on the basis of constitution to carry out prosecutorial supervision on administrative illegal ACTS from the perspective of prosecutorial power. The operation of administrative power is externalized into the making of administrative ACTS. The prosecutorial power realizes legal supervision over illegal administrative ACTS through "prosecutorial" and standardizes the exercise of administrative power. In their relationship, they always follow the constitutional principle of "division of labor and responsibility, mutual cooperation and mutual restriction". From the perspective of administrative prosecutorial supervision, in-depth study, on the one hand, is conducive to improve the special legal supervision system, optimize the administrative power supervision and control mechanism, to promote administrative organs to provide guarantees for the administration according to law. On the other hand, its ultimate purpose is to provide a strong legal guarantee for better safeguarding citizens' legitimate rights and interests and public interests.

### **1. The concept and characteristics of prosecutorial supervision over administrative illegal ACTS**

#### **1.1 Concept of prosecutorial supervision of administrative illegal ACTS**

As for the definition of prosecutorial supervision of administrative illegal ACTS, there are mainly three viewpoints in the academic circle. The first viewpoint holds that the essence of prosecutorial supervision is litigation supervision, so the prosecutorial supervision of administrative illegal ACTS refers to the supervision of administrative illegal ACTS by prosecutorial organs through litigation activities. The second view holds that the prosecutorial supervision of administrative violations is to implement legal supervision on specific administrative violations according to the provisions of the constitution and laws, which is equivalent to general supervision. The third view holds that the connotation of prosecutorial supervision of administrative illegal ACTS should be defined from five aspects: subject, object, basis, mode and purpose. According to this, the essence of prosecutorial supervision of administrative illegal ACTS can be summarized as the special legal supervision conducted by prosecutorial organs to safeguard public interests and ensure the uniform and correct implementation of laws in accordance with statutory powers and procedures on whether administrative ACTS are legal or not.

The author thinks that there are certain one-sidedness, the former two ideas is to be the third point of view, here's why: nowadays prosecutorial organs to exercise the prosecutorial supervision over the administrative illegal behavior is the main way of the administrative litigation activities, but does not mean that it is the only way to the prosecutorial advice and correct illegal notification form also is integral to the way of supervision, to the connotation of the administrative illegal behavior prosecutorial supervision directly defined as administrative litigation activity's point of view. The second point of view that administrative illegal ACTS prosecutorial supervision is no less than general supervision. The concept of general supervision originates from the Soviet union, which is a broader and more general supervision than the prosecutorial supervision of

administrative illegal ACTS. The idea that administrative illegal ACTS are equal to general supervision expands the meaning of prosecutorial supervision of administrative illegal ACTS, which is not accurate enough. In a country ruled by law, it is impossible for any organ to have complete general supervision power. Under the current system in our country, by the National People's Congress, the courts, the administrative body for reconsideration, disciplinary inspection and supervision departments, and other institutions through different ways to perform common administrative organs for the duties of a "general supervision", prosecutorial organs should not and cannot independently enjoy general supervision, this view excessive broadening the connotation of administrative illegal behavior of prosecutorial supervision. The third view clearly expounds the concept of prosecutorial supervision of administrative illegal ACTS. The author believes that prosecutorial supervision of administrative illegal ACTS refers to the legal supervision of administrative illegal ACTS by prosecutorial organs in order to guarantee the unified implementation of laws. As the main body of prosecutorial supervision, prosecutorial organs supervise administrative ACTS of administrative organs according to the constitution and laws when they violate laws, so as to maintain the correct implementation of laws and protect the interests of the state and citizens from infringement.

## **1.2 Characteristics of prosecutorial supervision of administrative illegal ACTS**

### **1.2.1 National**

The prosecutorial and supervisory power of administrative illegal ACTS is national in power source. This power is the power of legal supervision exercised by the prosecutorial organ and endowed by the state power organ according to law. It is a state power originating from the state and possessing profound significance. The emergence of this power is the manifestation of its state nature. The supervision of the administrative illegal behavior of prosecutorial supervision object to the administrative organ of the administrative illegal behavior, on behalf of the state administrative organs to exercise state power, the behavior of the error or not will directly related to the interests of the state and the credibility of the country, so the administrative illegal act for supervision and prosecutorial supervision administrative illegal behaviors with strong national. In addition, the prosecutorial organs exercise the power to protect the interests of the state and citizens from infringement, so the prosecutorial supervision of administrative illegal ACTS is also national in this sense.

### **1.2.2 Specialization**

We should understand the specialization of prosecutorial supervision of administrative illegal ACTS from three aspects: first, from the literal meaning of prosecutorial supervision of administrative illegal ACTS, we can easily see that the subject of this power should be the prosecutorial organ. Prosecutorial organs have become specialized legal supervision organs in China with the authorization of state power organs. As a kind of legal supervision power, prosecutorial supervision power of administrative illegal ACTS is exercised by prosecutorial organs with special authorization, so the exercise subject of this power is specialized.

Secondly, the object and scope of prosecutorial supervision of administrative illegal ACTS are specialized, which also reflects the difference between the power and general supervision. Object is relatively broad, general supervision and prosecutorial supervision administrative illegal behavior for prosecutorial organ within the limits prescribed by law to supervise administrative illegal act, the way of supervision and monitoring procedures must be in accordance with the law, which requires the prosecutorial organs in supervise administrative illegal behavior to follow the special characteristic of power.

Third, the prosecutorial supervision is the prosecutorial organ's full-time activity, regarding the administrative illegal behavior prosecutorial supervision system, its main body is the prosecutorial organ; But for the prosecutorial organ, the prosecutorial supervision activity is also its full-time activity. Prosecutorial supervision of administrative illegal ACTS is only one of the many supervisory duties of prosecutorial organs. However, prosecutorial supervision of administrative

illegal ACTS is a full-time activity of prosecutorial organs, which does not mean that other people have no right to supervise administrative illegal ACTS except prosecutorial organs. That is to say, there are other ways to supervise administrative illegal ACTS.

### **1.2.3 Initiative**

The so-called initiative means that the initiation of the inspection and supervision procedure of administrative illegal ACTS is not necessarily premised on the application. Different from the courts, when prosecutorial organs find administrative illegal ACTS in the course of performing their duties, they can start the supervision procedure according to their power, and no power can be abused. When prosecutorial organs actively supervise administrative illegal ACTS, they should also abide by the law and correct the wrong ACTS of administrative organs according to law. Prosecutorial organs should grasp and make good use of the initiative of prosecutorial supervision, correct administrative illegal ACTS in time before they have caused substantial damage or even appeared, and avoid the infringement of citizens' rights and public interests to the greatest extent.

### **1.2.4 Mandatory normalization**

The mandatory standardization of prosecutorial supervision of administrative illegal ACTS is reflected in the mandatory standardization of prosecutorial organs and the mandatory standardization of administrative organs: for prosecutorial organs, as the supervision subject of this system, they should exercise their powers in accordance with the law and should not cross the legal boundary and cause abuse of power. The relevant administrative organs that have committed administrative illegal ACTS are the supervised objects of this system, and they should actively cooperate with the prosecutorial organs to correct their wrong behaviors in time when the prosecutorial organs supervise them according to law. Moreover, the supervision of administrative illegal ACTS by prosecutorial organs is the implementation of state power, backed by state compulsion, and its supervision must have corresponding legal effect on the relevant administrative organs that have made illegal administrative ACTS.

### **1.2.5 Procedural**

The procedural nature of this system refers to that the prosecutorial organ cannot conduct substantive power disposition to the relevant administrative organ like the court in the process of supervising the administrative illegal ACTS, which is related to the initiative characteristics of this system to some extent. Prosecutorial organs enjoy initiative in the process of supervising administrative illegal ACTS and can start the supervision procedure by themselves. This system has the characteristic of procedural nature, which can prevent the abuse of power by prosecutorial organs and avoid excessive interference in administrative power. This characteristic and the administrative illegal behavior prosecutorial supervision system has the initiative characteristic mutually contain, also urges the prosecutorial organ's power to be just right, has well maintained the prosecutorial organ and the administrative organ's power to achieve the mutually balanced effect.

## **2. The positioning of prosecutorial supervision over administrative illegal ACTS**

### **2.1 The prosecutorial organ is the legal supervision organ in our country**

China's constitution defines the prosecutorial organ as "the legal supervision organ of the state", and the prosecutorial organ supervises the administrative power and judicial power on behalf of the power organ.

Scholars define the nature of China's prosecutorial organs as administrative organs, judicial organs, or double-attribute organs. Although there are differences among scholars on this issue, the academic circles all agree that prosecutorial organs have the nature of legal supervision organs. This nature of prosecutorial organs is of course closely related to the basic national conditions of our country.

Most western countries advocate the separation of powers and believe that the prosecutorial organ should be positioned as an administrative organ subordinate to the ministry of justice. China's

power system presents a structure of "two levels and five powers". Under the system of the supremacy of legislative power, the military power, judicial power, prosecutorial power and executive power, which are the two levels of power, exist side by side and balance each other, forming a basic power balance system. China implements the system of people's congresses, and local people's congresses at all levels assume the function of ensuring that the constitution, laws and administrative regulations are complied with and implemented in their respective administrative areas. However, due to the short session of the NPC, most of the NPC deputies are part-time deputies, and the time, energy and professional ability of the NPC make it impossible for the NPC to comprehensively supervise the complicated administrative power. Therefore, the constitution must set up special prosecutorial organs to supervise the administrative power and judicial power on behalf of the organs of power.

## **2.2 The prosecutorial supervision of administrative illegal ACTS is the supervision of the unity of administrative legal system**

Lenin once said: "the legal system should be unified. The sole authority of the attorney-general, and the only thing that must be done, is to oversee a genuine and consistent understanding of the rule of law throughout the republic." The law belongs to the system norm, people's behavior takes the law as the standard, including the administrative organ, all state organs are also so. It is particularly important for administrative agencies to have a correct and unified understanding of the law. First of all, as one of the state organs, its behavior has a wide range of influence, and the interests directly infringed by its illegal behaviors are much higher than those of individuals. Secondly, administrative organs are state organs, whose image is closely related to the credibility of the state, and they need to have a correct and unified understanding of the law. In order to convince the people that administrative organs exercise public administrative power on behalf of the state, they must first ensure that they can follow the uniform principles and norms of administrative law to handle specific cases on different occasions and under different circumstances. In order to further ensure the correctness and unity of administrative law enforcement, the prosecutorial supervision system of administrative illegal ACTS must play its corresponding role and maintain the unity of administrative legal system. China has a large number of provinces and cities with a large administrative system, and the existence of local protectionism and departmental protectionism. This phenomenon undermines the unity of China's administrative legal system to a certain extent. At this time, prosecutorial organs have made some contributions to the stability of China's political order while maintaining the unity of the administrative legal system. Administrative illegal behavior is the nature of prosecutorial supervision of prosecutorial organ to the supervision of the executive power, its main task is to supervise to correct the illegal administrative act of the administrative organ, the administrative organ shall, in accordance with the provisions of the law within the scope of reasonable exercise of executive power is given by the state, the reasonable exercise of executive power requires administrative organs follow the unity of the legal standard in the application of law, so the prosecutorial organ supervision of illegal administrative ACTS is the administrative legal system One sex supervision.

## **3. The superiority of prosecutorial supervision over administrative illegal ACTS**

### **3.1 Differences between prosecutorial supervision and internal supervision of administrative system**

The internal supervision of the administrative system is one-sided, and the hierarchy of the administrative organs is clear. The leaders have a strong degree of control over their subordinates, while the subordinates cannot supervise their superior leaders. Therefore, a top-down supervision system is formed, and the highest-ranking leaders of each unit and heads of each department will not be effectively supervised, which is also an unavoidable drawback of internal supervision of the administrative system.

The internal supervision of the administrative system belongs to the self-correcting mechanism,

which has many blind spots. First of all, there are frequent exchanges among various organs within the administrative system, and they have similar ideas about how to deal with specific problems, which will inevitably lead to preconceptions when supervising administrative illegal ACTS. In addition, the administrative organs cannot be impartial and objective in their examination of illegal ACTS, so the advantages of external supervision are highlighted. However, the prosecutorial organ and the administrative organ are parallel and independent of the administrative organ. When supervising the administrative illegal ACTS, it can not only break the situation of "no supervision by leaders" of the administrative organ, but also give professional and fair prosecutorial Suggestions to the administrative organ to correct its wrong behaviors when the self-correcting mechanism fails.

### **3.2 Differences between prosecutorial supervision and power supervision**

Administrative organs are elected by the people's congresses and are responsible to the people's congresses. However, the supervision of administrative organs by the people's congresses is far from enough to remedy the defects of internal supervision of administrative organs. The reasons are as follows:

First, administrative organs and people's congresses belong to the relationship of "generation" and "responsibility", under which administrative organs are supervised by people's congresses. In such supervision, political supervision takes a large proportion, but it is far from enough to correct administrative illegal ACTS only through political supervision, and a lot of legal supervision is needed to cooperate with it.

Second, the way of the people's congress to supervise the administrative organs also has some limitations. Administrative organs are supervised by the people's congress in the form of making reports. In this way, many specific and trivial administrative illegal ACTS cannot be supervised, thus failing to achieve the best effect of inhibiting administrative illegal ACTS.

Third, the characteristics of the people's congress system also determine that it needs to set up special organs to supervise the administrative organs. The people's congress is the power organ of the conference system, which means that the people's congress cannot supervise the administrative illegal ACTS all the time. Besides, the people's congress needs to deal with a lot of things, and its time for supervising administrative organs is extremely limited. All these realities urge the people's congress to set up special organs to be responsible for supervision.

Fourth, NPC deputies are scattered in various fields, and their legal expertise is uneven, which also limits the supervision effect of NPC on administrative illegal ACTS to some extent.

Therefore, people's congresses must set up special legal supervision organs to exercise their functions and powers when they cannot supervise administrative organs.

### **3.3 Differences between prosecutorial supervision and trial supervision**

The court strictly follows the principle of "no complaint and no reply", that is to say, the court can only supervise the administrative organ through the way of trial of administrative illegal ACTS when the party concerned files an application to the court. The passive power characteristic of the court also leads to the aftereffect of the trial supervision. In addition, the administrative procedure takes a long time and requires a lot of judicial resources, and the judicial organs are unable to deal with some emergency cases in a timely manner, which requires the coordination of the prosecutorial organs. Because of the initiative of prosecutorial supervision of administrative illegal ACTS, prosecutorial organs can take the initiative and supervise administrative illegal ACTS in a timely manner when they do exist, so as to comprehensively and effectively curb the occurrence of administrative illegal ACTS.

### **3.4 The difference between prosecutorial supervision and public opinion supervision**

In the era of "network" of the whole people, more and more citizens supervise administrative organs through the network, and the improvement of public legal awareness is an important embodiment of the progress of China's rule of law construction. However, the disadvantages of supervision by public opinion are also obvious. Firstly, supervision by public opinion has no legal effect, and the supervision of administrative illegal ACTS can only stay at the level of

condemnation, which cannot be implemented in the specific ACTS of administrative organs. Secondly, the legal level of the public is uneven, most ordinary people do not have professional legal knowledge, so public opinion supervision focuses on moral supervision; Third, public opinion is easily manipulated by the media, which is an important source of public information. Many media focus on such cases and influence or even manipulate the public's judgment.

The prosecutorial organs are endowed with the power of legal supervision by the constitution and the law, and the prosecutorial teams are composed of professional legal personnel with high legal literacy.

#### **4. Summary**

Every kind of power has the possibility to be abused, the executive power, the prosecutorial power is so. In recent years, China has suffered a lot of unnecessary losses due to the abuse of administrative power, so we should control the expanding administrative power. Strengthen the prosecutorial organ the supervision of illegal administrative ACTS is the objective need to quash the rising tide of executive power, is also the inevitable requirement to carry out the reform of the judicial system at present, the administrative illegal behavior prosecutorial supervision exist in the process of practice with sexual monitor flood, source of clues, problems such as lack of cases in the process of the practical application of this system, the supervision object is not clear, responsibilities unclear boundaries and application system needs us to solve such problems as incomplete. Based on this, the author puts forward corresponding Suggestions to improve the prosecutorial supervision system of administrative illegal ACTS. With the rapid development of the era of big data, the reform of China's supervision system is advancing step by step. With the tacit cooperation between prosecutorial organs and supervisory organs, the damage to public interests caused by administrative illegal ACTS will be effectively curtailed, and various state powers in China will also perform their respective functions and operate smoothly.

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