

Research on the System of Evidence Transformation between Administrative Law Enforcement Evidence and Criminal Procedure Evidence

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Abstract: The legal provisions of the criminal procedure law definitely limit the scope of transforming administrative evidence into criminal procedural evidence. Although these provisions provide a clear legal basis for solving the problem of convergence of administrative evidence and criminal evidence in judicial practice to a certain extent. The procedural law stipulates the scope of the transformation of administrative evidence materials, and to a certain extent solves the problem of the connection between the evidence of execution and the evidence of punishment in the judicial practice. However, because the provisions are too rough, there is still a great controversy in the academic circle. In order to effectively solve the conflicts and disputes between the evidence transformation system and the exclusionary rules of illegal evidence and the provisions of evidence review, and to better serve the investigation, prosecution and trial activities, it should be improved pertinently.

1. Introduction

In the judicial practice of foreign countries, in general, we will not take the initiative to distinguish the illegality and criminality of the act. In most cases, we use the qualitative method to define the criminal act, and usually only take the quantitative method into account when sentencing. In the process of judicial practice in our country, we mainly adopt the combination of qualitative and quantitative methods to determine the crime [1-2]. That is to say, the classification management of crime in our country is mainly based on the nature of the illegal act and the degree of harm to society. When the administrative illegal act has serious social harm, and it has met the crime stipulated in the criminal law, it has been transformed from the administrative illegal act to the criminal offence [3]. At this time, it should be investigated in accordance with the relevant provisions of the criminal procedure law. The investigation of the same act by the administrative organ and the criminal organ will not only cause the waste of judicial resources, but also lead to the great waste of administrative resources because the administrative law enforcement organ of some cases has collected evidence [4-5]. The basic relationship diagram of administrative law is shown in Figure 1. When the nature of the case changes, the judicial organs need to collect evidence again, which will lead to the disappearance of the best time to collect evidence, so that the evidence can not be collected eventually. For this reason, scholars have been advocating for many years that the law allows the evidence of administrative law enforcement to be transformed into evidence of criminal proceedings under certain conditions. The current criminal procedure law transforms such theory into practice. Therefore, it may cause the dissatisfaction of all parties due to the weak operability in practice, thus affecting the fairness of the case results. This paper intends to study this problem and try to explore some new ideas.

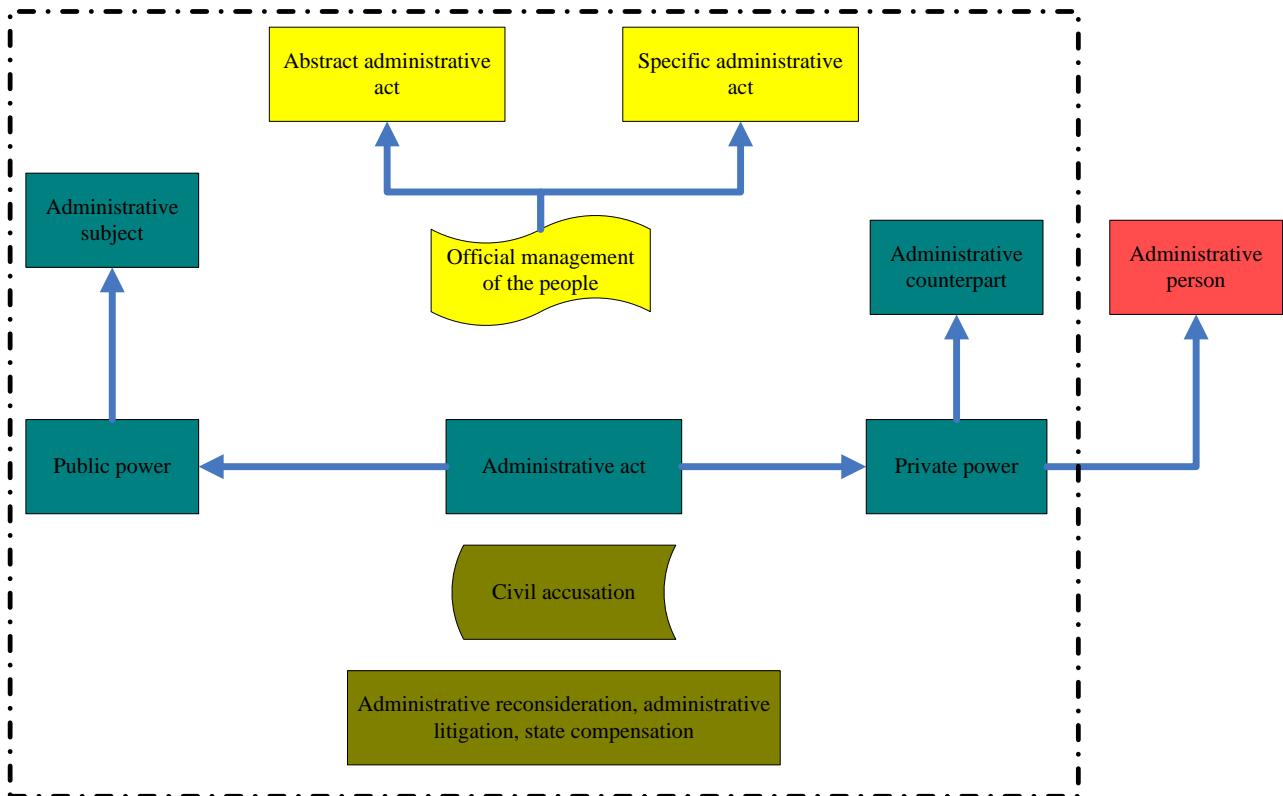


Fig.1 Basic Relationship of Administrative Law

2. The Theory and Standard Requirements of Evidence Transformation

2.1 On the Theory of Evidence Transformation

2.1.1 The Reasons Why the Evidence of Administrative Law Enforcement Can Be Transformed into the Evidence of Criminal Procedure

In the legislative mode of the dichotomy of administrative illegal and criminal law, different subjects of law enforcement carry out different investigations on the same illegal act, and the nature of the two kinds of evidence obtained is not the same. Under the integrated legislation mode of administrative violation and crime in foreign countries, the personnel who undertake the task of investigation and evidence collection may be administrative law enforcement personnel. In civil law countries, the main responsibility of criminal investigation is “judicial police”. The so-called “judicial police” does not refer to an independent police department, but refers to the personnel dispatched or directed by the prosecutor, or authorized by law to carry out investigation tasks, generally criminal police, including other departments, such as the investigators of the political department [6-7].

The new criminal procedure law stipulates that some evidence materials collected in the process of administrative enforcement can be used as evidence in criminal proceedings. On the one hand, it can effectively use the professional ability of administrative law enforcement agencies to investigate the evidence of illegal acts in specific areas, collect and preserve relevant evidence in time, so as to reduce the pressure of investigation and evidence collection of investigation agencies. On the other hand, some evidences have been collected by administrative law enforcement agencies, and the forms of evidences have changed, or the evidences have been collected and fixed, and cannot be restored to the original possession state. In this case, it is undoubtedly the best choice to transform the evidence of administrative law enforcement into criminal evidence.

2.1.2 The Collection Procedure of Administrative Law Enforcement Evidence and Criminal Procedure Evidence is Different

As an effective way for the state to manage the society, administrative law enforcement is an

administrative act carried out by administrative law enforcement organs in accordance with legal procedures and limits of authority, which is efficient, initiative and unilateral [8]. In the process of administrative law enforcement, the collection and fixation of evidence is very important. However, due to the lack of a unified administrative code, so far there is no legal provisions on administrative law enforcement evidence. In addition, in terms of the standard of proof, although the decision of administrative law enforcement also requires the degree of clear facts and conclusive evidence, it is much lower than the standard of proof for excluding reasonable doubt in criminal proceedings. Accordingly, in terms of the requirements of evidence, the requirements of objectivity, legality and relevance of evidence obtained by administrative law enforcement are relatively low.

2.1.3 There Are Differences between the Forms of Evidence of Administrative Law Enforcement and Evidence of Criminal Procedure

In the field of procedural law of our country, the common practice is to legalize the form of evidence according to the manifestation of evidence facts. Each form of evidence is an independent type of evidence to distinguish it from all other types of evidence. The other two procedural laws, namely the administrative procedure law of the people's Republic of China and the Civil Procedure Law of the people's Republic of China, have the same relevant provisions, and classify the evidence from its manifestation [9-10]. However, the legal form of administrative law enforcement evidence has not yet been unified in China. Based on the needs of administrative law enforcement, some department rules often make a preliminary regulation on the types of evidence by referring to the relevant provisions of the procedural law.

From the perspective of litigation proof, no matter what form, as long as the materials that can be used to prove the facts of a case are evidence, the evidence must be verified to be true before it can be used as the basis for deciding a case. Because of the juxtaposition between the types of evidence, the system of evidence types is open and does not exclude the emergence of new types of evidence. However, according to the provisions of the new criminal procedure law, the transferred evidence material is only the “evidence material” for administrative law enforcement and case investigation, not the criminal evidence. It can only be used as the criminal evidence material after the transformation and classification of the public security and judicial organs and in line with the types of evidence stipulated in the new criminal procedure law.

2.2 Standard Requirements for Evidence Transformation

Although paragraph 2 of the new criminal procedure law clearly stipulates that the evidence collected by administrative law enforcement can be converted into evidence for criminal proceedings, there is no competent authority to apply this provision and make authoritative legislative and judicial interpretation [11]. Combined with the expression of law and academic theory, the author believes that the following aspects should be paid attention to when transforming administrative law enforcement evidence into criminal litigation evidence. The four problems that should be paid attention to when transforming administrative evidence into criminal evidence are shown in Figure 2.

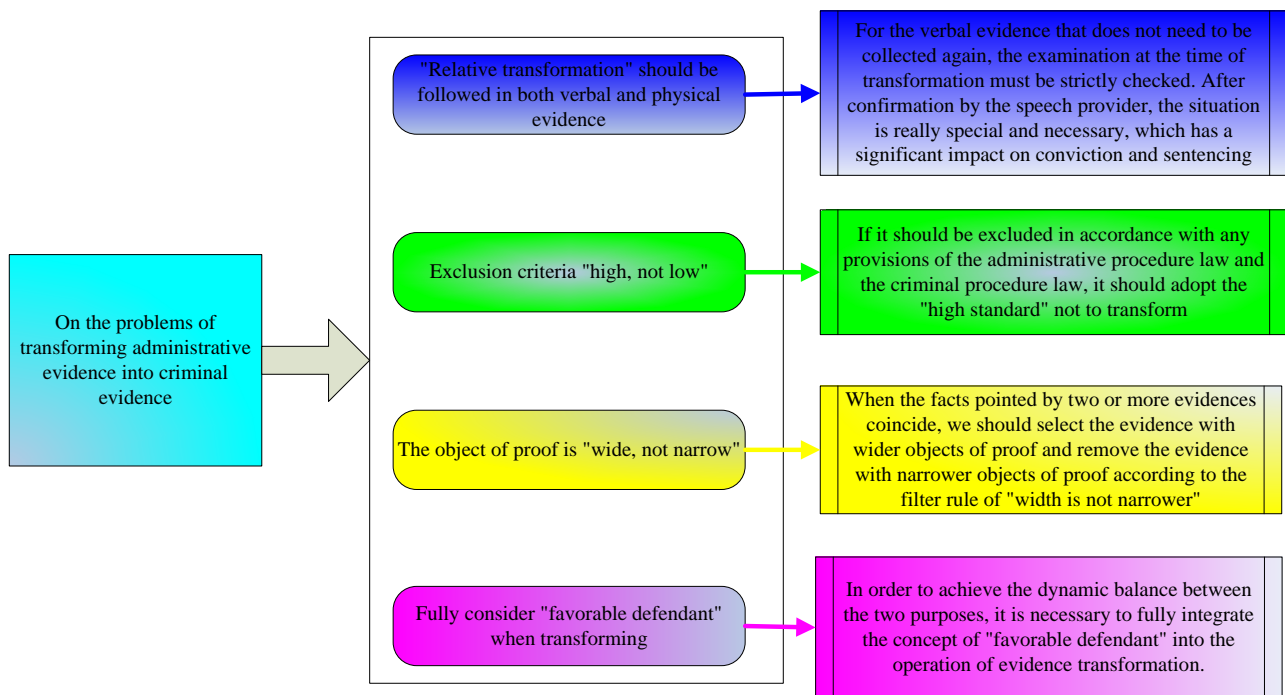


Fig.2 on The Problems of Transforming Administrative Evidence into Criminal Evidence

2.2.1 Different Kinds of Evidence Should Have Different Conversion Rules

The author believes that different kinds of administrative law enforcement evidence should be transformed into criminal litigation evidence according to different transformation rules. The evidence of administrative law enforcement that can be used as evidence in criminal proceedings is mainly material evidence, including material evidence, documentary evidence, audio-visual materials, electronic data, etc. According to the provisions of the law, physical evidence materials can be directly used as evidence in criminal proceedings after being verified in accordance with the law; for the appraisal opinions collected by administrative law enforcement agencies in administrative law enforcement, if the appraisal agencies and appraisers have legal qualifications and the appraisal procedures conform to the legal laws and relevant regulations, the investigation agencies can also collect and use them as evidence in criminal proceedings. It is generally believed that the statements of the parties and the testimony of the witnesses collected by the administrative law enforcement organs in the administrative law enforcement can not be used as the interrogation record in the evidence of criminal proceedings. As for the records of on-site inspection and inspection in administrative law enforcement, the photos, videos and the data recorded by professional personnel shall be collected and used as the evidence of criminal proceedings to determine the facts of the case. However, due to the fact that the subject and procedure of making the on-site investigation and inspection record are not in line with the requirements of the subject and procedure of making the on-site investigation and inspection record, investigators should make the on-site investigation and inspection record in time according to the new criminal procedure law and the provisions of the public security organ on handling criminal cases, even if the case has been damaged.

2.2.2 The Transformation of Evidence Should Be Examined for Legitimacy

The conversion of administrative law enforcement evidence into criminal procedure evidence should meet the requirements of criminal procedure law. In addition to objectivity and relevance, the legitimacy of evidence must be guaranteed. The new criminal procedure law has established the exclusionary rule of illegal evidence in our country, "if there is evidence that should be excluded in the investigation, examination and prosecution, and trial, it should be excluded according to law, and should not be used as the basis for prosecution opinions, prosecution decisions and judgments." If the evidence collected by administrative law enforcement agencies that does not have the

legitimacy requirements is directly converted into use without review, then the transformation of administrative law enforcement evidence becomes a way to avoid the exclusionary rule of illegal evidence. Therefore, the collection of legal evidence is the premise of the use of evidence collected in the process of administrative law enforcement in criminal proceedings, and is also the focus of the investigation organ to review the administrative law enforcement evidence to be transformed. The legitimacy requirements of evidence collection of administrative law enforcement should include: the subject of evidence collection is the subject of law enforcement stipulated by laws and regulations; the procedure of evidence collection meets the requirements of laws and regulations on which administrative law enforcement is based; the form of evidence meets the requirements of relevant administrative laws, etc.

3. Suggestions on the Improvement of the Evidence Transformation System of Administrative Law Enforcement and Criminal Procedure

3.1 Strengthening the Examination of Criminal Evidence Ability of Administrative Law Enforcement Evidence

Strengthen the examination of the evidence collected in the process of administrative law enforcement, so as to ensure the legitimacy and credibility of the evidence collected in the process of law enforcement to the maximum extent, and at the same time ensure that some differences between the two kinds of evidence collected will not have a greater impact on the substantive content of the case. At the same time, it should be noted that in the specific transformation process of the collected evidence, the focus of our review is to see whether the collected evidence meets the explicit requirements of the criminal procedure law on the evidence capacity.

3.2 Perfect the Supervision of the Evidence Transformation System of Administrative Law Enforcement and Criminal Procedure

The implementation and supervision of this system has not been further defined in China's law. Therefore, we believe that if an administrative organ can illegally forge or tamper with evidence or take other illegal evidence before or in the process of transferring evidence, the procuratorial organ should promptly correct it in the process of supervision after the transfer, so as to make it have legal effect and ensure the fairness and legality of judicial activities. At the same time, it is necessary to strengthen the daily work exchange between the procuratorial organ and the administrative organ, which is also the premise of strengthening the connection of evidence and carrying out strict management. When an administrative organ transfers a case suspected of a crime, it needs to file it with the procuratorial organ in a timely manner. For those cases with serious and complex circumstances, the transferred evidence should be copied to the procuratorial organ in time. The procuratorial organ should also track and supervise the case in time, and promote the evidence conversion system to further improve.

3.3 Perfect the Operation Rules of Evidence Transformation

Under the current situation, the scope of evidence that can be transformed is not clear, and there are huge differences between legal norms. In order to solve the outstanding problems in the system of evidence conversion, it is very urgent to improve it through legislation. However, in China's legal norms, the implementation of the evidence conversion system has not yet some clear legal provisions. Therefore, the judicial organ should make relevant judicial interpretation provisions and legal provisions in time based on the social reality and the needs of the development of the times, so as to constantly improve the system of evidence conversion. According to the law, after the preliminary examination and verification of the collected evidence, it is up to the legal organ to decide which evidence materials can be used and used for mutual transformation, rather than the administrative organ to decide which evidence materials can be transformed according to its own facts.

4. Conclusion

Through the above discussion, we can also draw the differences between administrative law enforcement evidence and criminal litigation evidence, and improve the system through these differences and differences. It is an inevitable trend for the development of the evidence system to transform the evidence of administrative law enforcement and criminal procedure. In the process of judicial practice and administrative law enforcement, we should not only pay attention to the source of evidence and the legitimacy, effectiveness and objectivity of evidence, but also pay attention to the fairness and effectiveness of the procedure of collecting evidence. Judicial organs and administrative organs should cooperate in collecting evidence, communicate in advance, avoid the abuse of power resources, and effectively ensure the timeliness and optimality of evidence, so as to continuously promote the improvement of the transformation system of administrative law enforcement evidence and criminal litigation evidence. The legislative department should also base on social practice, listen to the opinions of various aspects, seek truth from facts, listen to the opinions of scholars, contact judicial practice and law enforcement practice, so as to continuously promote the legislation of the transformation system of administrative law enforcement evidence and criminal litigation evidence, and provide practical guarantee and legal and effective legal sources for the wide implementation of this system.

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