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Research on Indictability of Criminal Investigation Behavior —in the Background of Criminal Judicature Reform

Lin Jin
School of Public Security
Zhongnan University of Economics and Law
Wuhan 430064, China
E-mail: jingzhujin0612@gmail.com

Abstract

Criminal justice reform is a new requirement formulated to carry out basic strategy and target of ruling the country by law after we joined in WTO, and punishing crime and guaranteeing human rights are the two value goals pursued by modern criminal justice practice. Investigation is a part which belongs to criminal procedure system. However, whether the act of criminal investigation could be institute legal proceedings is still in dispute. On the one hand, there are abuse of right and dissimilation of power in the course of criminal investigation: on the other hand, we also should consider concrete present situation of judicial practice in our nation, and the particularity of act of criminal investigation itself. Our purpose is to give the solution to this question by the application of citing instances method, contrastive demonstrating and contradict the opinion of others. The thesis holds the opinion that it is suitable for the cognition of such problem to combine it with improper criminal investigation behavior, and give specific measures based on analysis of the nature of criminal investigation behavior and power disposition in criminal judicature now.

Keywords: Criminal judicature, Dissimilation of investigation power, Nature of investigation behavior

1. Introduction

Overall conception on criminal judicature system innovation and concrete problems for operation are focal points studied and concerned by scholars of criminal judicature academic circles. For criminal investigation is a component of criminal procedure, so we also should not only establish viewpoint of inspection from legitimate procedure correlated with the background of criminal judicature system, but also need to pay attention to the substantive value of criminal investigation.

Whether litigation can be initiated against the act of investigation is controversial, and we need to take peculiarity of criminal investigation into consideration. Usually, criminal investigation behavior is divided into secret and public patterns. In the first circumstance, the means of using special criminal informer and ransack will probably suffer from the dilemma that special criminal informer may constitute entrapment or complicity with real suspect (Wang Wen Zhang, 2002, p.3), so it is necessary to give legal restrictions to regulate such method of criminal investigation. But meanwhile permitting litigation may let the arrangement about predetermined criminal investigation strategies exposed. As far as I am concerned, we can regulate and legitimate secret investigation by reconstructing the relationship between Public Security Organization and People's Prosecutors' Office then emphasizing prosecutorial supervision against secret investigation, so permitting initiate lawsuits is not appropriate. However, unsuitable exercise of criminal mandatory measures such as arrestment, to ransack and custody is a present problem remaining in act of public investigation, thus act of public investigation has the necessity to be brought an action against.

2. Investigation power dissimilation

2.1 Significance

Then, we should further clarify different situations of investigation power dissimilation. For research on controversial problems in science of investigation requires us not only to establish thinking mode from the angle of the macroscopic that we should put this dispute at due process of criminal procedure, but also need to pay attention to the microcosmic substantial problems like concrete situations of investigation power dissimilation. Next the thesis summarizes four concrete dissimilation situations of investigation power, because on one hand we give the significance of indictability of criminal investigation behavior on the premise that the existence of investigation power dissimilation; on the other hand through analyzing concrete situations we can further definite the property of litigation against act of investigation: it belongs to administrative procedure or criminal procedure? Administrative procedure means that People's Court solves

administrative disputes in specified range by surveying legitimacy of administrative action, according to requests of nature person, corporation and other tissues; while criminal procedure is given the conception that People's Court, People's Prosecutors' Office and Public Security Organization solve criminal liability problems of the accused with the participation of the parties and other criminal litigant participants.

2.2 Concrete manifestations

2.2.1 Mixing of administrative and criminal function

Administrative compulsory measures are applied in the law case which should be dealt with criminal procedure (Liu Mei Xiang, 2004, p.168), or there is the situation that criminal liability and administrative penalty are the same nature of punishment: restricts personal liberty or dispossess. In the latter, for the counterparty who has accepted administrative attachment before suffering from criminal detention or arrestment, time limitation of personal freedom based on administrative attachment should be offset criminal coercive measure which is toward the same behavior of counterparty. However, Public Security Organization sometimes will not exercise the offsetting when executes criminal punishment.

2.2.2 Illegal enforcement of criminal coercive measure

Illegal enforcement is the serious problem remaining in the course of carrying out concrete criminal coercive measure by Public Security Organization, such as extorting a confession by torture, abusing power of ransack and distraint, illegally using monitoring system and arresting without formal authorization from People's Prosecutors' Office But we should get to know that the relationship of Public Security Organization and People's Prosecutors' Office in China is "division of individual responsibility" and "mutual restriction", People's Prosecutors' Office is endowed with the responsibility of supervision of case filing, examining arrest, review and prosecution, and it has the duty to prevent illegal enforcement of concrete criminal coercive measure from emerging. So we can deduce that if we take legal proceedings against act of investigation, subject of action are the two: People's Prosecutors' Office and Public Security Organization.

2.2.3 Admissibility of administrative presumption evidence

In the course of determining crime of causing traffic casualties, paper of determining the responsibility in a load traffic accident is the conclusion given based on administrative action, but Public Security Organization usually regards such paper as the evidence which can enter into the scope of evidences collected for criminal investigation. To a great extent is the reason that cognizance on responsibility degree of causing traffic trouble depends on paper of determining the responsibility in a load traffic accident, therefore, if Public Security Organization consider somebody constitutes crime of causing traffic casualties, and the paper is a powerful explanation. In my opinion, whether admissibility of administrative presumption evidence in criminal investigation activities should be admitted still controversial, because we must notice such question: if some mistake contained in the paper leads to improper collection of evidences in the stage of investigation, how to identify the property of litigation against act of investigation, criminal procedure or administrative procedure (Li Yong Hong, 2006, p.218).

2.2.4 Appearance of malfeasance in expert testimony

Expert testimony is one of the concrete investigation measures, and according to Decision of Management Problems in Expert Testimony, the meaning of malfeasance in expert testimony is that surveyor or identification organization brings heavy loss to the parties for breach of duty, providing illusive proving documents or adopting other fraud method in order to defraud registration. However, Decision of Management Problems in Expert Testimony is management detailed rules of administrative organ, and expert testimony is managed by administrative department for justice, contradictorily malfeasance in expert testimony also the component of investigation measure. So whether indictability of criminal investigation behavior should include malfeasance in expert testimony is the problem we need to consider.

3. Nature determination of investigation activity

3.1 From an angle of nature of investigation power

Analyze particular conditions mentioned above, maybe we can see that nature determination of investigation activity is the key point to further discuss the indictability of investigation behavior. If inappropriate actions happening in investigation activity are belong to category of criminal field, we can not initiate administrative procedure. First of all, we make nature determination of investigation activities from a viewpoint of nature of investigation power. Some scholars point out that investigation power is pure judicial power (Huang Qiang, & Ge Mu, 2004, p. 4). In my point of view, such statement has certain reason but still owns the defectiveness. Investigation is used in the stage of criminal investigation for the purpose of finding out the details of the case and collecting the evidences. Thus, purpose of criminal investigation is consistent with that of criminal procedure. Besides, investigation power manifested as characters of substantive truth, procedural justice and modesty for operation and to a certain extent reflects neutral feature of justice. In a word, investigation power really possesses some attribute of judicial power, and based on

traditional idea, judicial behavior can not be initiated lawsuits, so we should not give indictability to act of investigation, which means investigation behavior does not have the litigable nature.

I incompletely agree with this proposition, and concrete situations of investigation power dissimilation let us know the necessity and emergency to give the parties some powerful way to protect their rights and interests, then restrict the abuse of power, so litigation is an effective way to realize such goal. State Compensation Law of the People's Republic of China ignores how to launch the way of judicial remedy under various conditions of investigation power dissimilation, and it can not create some channels with practical significance to prevent interest of the suspects from being infringed. Therefore, we can not deny possibility of accusation against act of investigation; also investigation power has other characters which make it distinguish from pure judicial power.

3.2 From an angle of operation mechanism

The operation mechanism of criminal investigation activities is characterized with administrative act. First of all, investigation system runs the pattern of "strips and blocks combing together, with the blocks dominated", and implement leadership of business from strips organization. This is quite different from longitudinal guidance models of judicial organ. Secondly, the starting of criminal investigation activities has the initiative, after placing a case on file for investigation and prosecution, Public Security Organization usually fulfill research work and put criminal coercive measures in an active way, while judicial activity has obvious passivity. The beginning of judicial activity is limited by prosecution, appeal and petition, and the trial scope is decided by the range of prosecution. The third, substantive or programmed form of sanction given by judicial organ can not be changed only for the reason that facts of original judgment are not clear, insufficiency of evidence or the composition of trial organization lack legitimacy. But compared to judicial activity, the result of criminal investigation activity can be changed by preliminary hearing, and People's Prosecutors' Office also has the authority in case there is need for supplemental investigation, and sends the case back to Public Security Organization for supplemental investigation, or conduct further investigation by itself.

3.3 Nature of investigation activity

Combined with the analysis of those two angles mentioned above, as far as I am concerned, investigation activity is quasi-judicial activity carrying with administrative color, and it is not pure judicial power. In addition, in the second part of the thesis, by summarizing concrete situations of investigation power dissimilation and we know the important practical significance for giving act of investigation indictability nature.

So in my opinion, we can take legal proceedings against act of investigation within the scope of criminal procedure, but for the complexity of investigation behavior, we need to give specific solution countermeasures according to four different situations.

4. Whole conception of indictability

4.1 Situations for permission to take proceedings

In this part, I will give whole conception of indictability in my understanding and cognition. In the first circumstance which is the mixing of administrative function and criminal function, proceeding against act of investigation is reasonable for the case itself should be coped with criminal procedure, and the purpose of correcting improper administrative compulsory measure is to form proper decision about how to take criminal coercive measures. Besides, the occurrence of such circumstance due to unclear boundary of authority seriously infringes rights and interests of the suspects. So I agree with the proposition that entrusting to us the right of taking legal proceedings against act of investigation in such situation. However, single prosecutorial function of judgment system of criminal justice excludes judicial supervision toward pretrial activities, therefore, besides endowing the suspect right of presenting a plea, we need to strengthen judicial supervision toward pretrial activities. There is a viewpoint about the suggestion that People's Court should intervene the stage of criminal investigation as neutral party (Zhou Chang Jun, 2005, p.195). I affirm the positive aspect of this suggestion, but we need to notice the difference between western legal systems and judicial practice in our nation. In present stage, carrying out the model of complete intervention of People's Court is not suitable; the authority of People's Court can not substitute that of preliminary hearing department. Maybe the feasible way is to select persons who are proficient in criminal law from People's Court, and then constitute the expert group, such group does not intervene the procedure of examining or approving an arrest, and its main duty is judge whether determination of criminal facts given by investigation personnel is right or if the suspect should bear criminal liability, the justifiable bases of implementing criminal coercive measure.

Then turn to the second circumstance "illegal enforcement of criminal coercive measure", People's Prosecutors' Office own the obligation of requiring Public Security Organization to execute supplemental investigation toward law case transmitted for review and prosecution, and supervising legitimacy of act of investigation or whether some criminal coercive measure taken based on the merits of law. Therefore, we deduce subject of action are the two: People's Prosecutors' Office and Public Security Organization. We need to establish special judicial review mechanism toward supervise behavior of People's Prosecutors' Office, and litigation is the way initiated by the suspects to start review to

People's Prosecutors' Office. In the actual scope of review, we must pay more attention to legal authorization of prerogative order provided by People's Prosecutors' Office. In addition, it is necessary to permit the suspect to initiate corresponding mental injury compensation.

4.2 Reasons for no-indictment

In the content mentioned above, we discuss the significance and situations of indictability, and we still need to clarify some situations which are not suitable for being take legal proceedings. In the third circumstance "admissibility of administrative presumption evidence", improper collection of evidences in the stage of investigation for mistakes existing in paper of determining the responsibility in a load traffic accident is just such situation. Problems exists in the paper are appropriate for solved by administrative reconsideration, because whether such paper can enter into criminal procedure as administrative presumption evidence and be treated as a controversial part are focuses remaining on the stratum of legislation technology. These problems need to be stipulated in declaratory statute for Criminal Procedure Law of the People's Republic of China. Last but not least whether we can initiate legal proceedings the target of which is expert testimony? The proposition that I want to advocate is expert testimony possesses high technology and nature of neutrality, although it is a part of investigation measures, its operating subject and system of management reflect the property of administrative system, thus, permitting possibility of accusation is not a proper idea.

5. Conclusion

As far as I am concerned, whether permit suspects to initiate lawsuits or not needs to consider factors hereinafter:

1. If concrete act of investigation infringes rights and interests of the suspects by carrying out illegal criminal coercive measures and other criminal methods, like situations of "mixing of administrative function and criminal function" and "illegal enforcement of criminal coercive measure", we can regulate such act of investigation by litigation, and then strengthen judicial supervision toward pretrial activities or establish special judicial review mechanism toward supervision behavior of People's Prosecutors' Office, finally permit the suspect to initiate corresponding mental injury compensation.

2. If the problems are mainly recognized as defects exist in current laws, like "admissibility of administrative presumption evidence", or in the situation of "Appearance of malfeasance in expert testimony", and the property of which has administrative attributes, those circumstances are not suitable to be raised lawsuits.

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