

Feasibility of Integration of Arrest and Prosecution and Suggestions for Perfection

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Abstract—In the context of judicial reform, the procuratorial organs' review for arrest and prosecution should be unified or separated, which not only becomes the reform focus of the procuratorial organs' internal institutional adjustment, but also relates to the realization of a fairer procuratorial system reform. "Integration of arrest and prosecution" is the best choice under the trial-centered judicial reform that is in line with China's national conditions at this stage. This paper analyzes the feasibility of "integration of arrest and prosecution" and puts forward suggestions for its perfection, so that it can better conform to the supervision system reform and improve judicial efficiency.

Keywords—integration of arrest and prosecution; procuratorial work; judicial reform

I. INTRODUCTION

The right to arrest and the right of public prosecution are two basic powers of procuratorial organs. With the development of criminal judicial reform, how to operate fairly and efficiently has become a hot spot of study for scholars. Guaranteeing that the rights of arrest and public prosecution can fully play their functions is not only conducive to the perfection of the adjustment and allocation of the procuratorial organs' internal institutions, but is also conducive to the development of trial-centered judicial reform.

II. FEASIBILITY OF "INTEGRATION OF ARREST AND PROSECUTION"

"Integration of arrest and prosecution" means not only the simple addition of the two procedures of arrest and prosecution, but the combination of various aspects. The integration of internal institutions is not only conducive to giving better play to various departments, but also has a positive impact on the procuratorial system reform in many aspects. On July 25, 2018, Zhang Jun pointed out at the seminar of the Supreme People's Procuratorate that it is necessary to use the reform of the procuratorial organs' internal institutions as a breakthrough, reorganize the case-handling agencies, divide by the case types, and integrate arrest and prosecution.

"Integration of arrest and prosecution" is more conducive to improving work efficiency. The implementation of "integration of arrest and prosecution" shortens the time limit

for case handling to a certain extent. In the pilot procuratorates, the time limit for case handling during the review and prosecution period has been greatly shortened. For example, in the "Changsheng vaccine case", it only took the procuratorial organ 17 days to review the arrest and prosecution; the time for case handling was shortened, the efficiency of litigation was improved, the cumbersome procedural matters were reduced, and the problem of "understaffing for cases" was solved to a certain extent. In the current stage, with the increasing social contradictions and the high incidence of criminal cases, procuratorial organs in various places are understaffed. The realization of "integration of arrest and prosecution" combines review of arrest with review of prosecution, which can reduce repeated trials of the same fact by procuratorial organs, save judicial resources to a certain extent, improve the efficiency of case handling to a large extent, and reduce the possibility of supplementing and returning the review while saving the time for review, making it more beneficial for the protection of human rights. The quality of case handling is better guaranteed. Prosecutors can actively guide the investigation of cases, promptly eliminate the illegal evidence, and improve the investigation procedure. The personnel who undertake the arrest and public prosecution in the separation of arrest and prosecution generally have less communication and cannot promptly find the defects, and the "integration of arrest and prosecution" is conducive to the overall improvement of the quality of case handling.

The "integration of arrest and prosecution" model is conducive to strengthening litigation supervision. Under the separation mode of review prosecution and review arrest by the procuratorial organs, the investigation and supervision departments will provide supervisory opinions after discovering that the investigation activities of the public security organs are illegal or improper. However, after putting forward the supervisory opinions, the investigation and supervision departments often do not participate in the follow-up case handling, which will lead to a certain lag when the supervision is unsuitable. The public prosecution department of the procuratorial organs often does not understand the supervision of the investigating activities in the arrest step, which makes it even more difficult to grasp the implementation of the supervision opinions. Under the mode of "integration of arrest and prosecution", one department is responsible for reviewing arrest and reviewing prosecution, which can effectively solve the problem of

tracking and supervising the supervisory opinions mentioned in the review arrest stage, and is conducive to the improvement of supervision effect. At the same time, the mode of "integration of arrest and prosecution" is convenient for the procuratorial organs and investigating organs to communicate efficiently and smoothly. At the stage of review arrest by the procuratorial organ, prosecutors can lead, supervise, and guide the work in a timely manner through regularly communication and random measures after deciding to approve to arrest or arrest the suspect. During the review prosecution stage, the procuratorial organs and investigating organs timely communicate on major issues in the society, reach a consensus on the content and methods of returning and supplementing investigations, and avoid unnecessary returned and supplemented investigations during the review prosecution stage.

The "integration of arrest and prosecution" can increase the shock to criminal suspects. When arrest and prosecution are separated, prosecutors often consider relevant factors such as assessment, and often delay arresting the criminal suspect or do not dare to arrest the suspect, which will damage the timely acquirement of evidence, and even condone the criminal suspects to repeatedly commit crimes; under the integration of arrest and prosecution, the prosecutor in charge of the case will promptly take enforcement measures such as arrest and exercise deterrence against the suspect, which will facilitate the smooth development of the case.

The implementation of "integration of arrest and prosecution" is conducive to promoting the professionalization of procuratorial organs' work. With the continuous development of science and technology, the means of crimes are constantly developing, the number of crimes in the high-tech field is increasing, the anti-investigation capabilities of criminals are getting stronger, and the cases are becoming more complex and diverse, which demands for higher professionalization of procuratorial organs and personnel. After the implementation of "integration of arrest and prosecution", instead of dividing by litigation phase in the past, it will divide by the relevant professional fields, which is more conducive to the professionalization of the procuratorial organs' division of labor. The investigators accumulate rich experience and professional quality by studying professional knowledge and handling cases, and can adapt to changing circumstances during investigations, so as to better complete the work. Through professional division of labor, the personnel who understand the law and the professional knowledge can engage in the corresponding professional criminal procuratorial work, which will inevitably lay a good foundation for the procuratorial organs to expand business and improve the work efficiency and quality.

III. THE PERFECT MECHANISM FOR "INTEGRATION OF ARREST AND PROSECUTION"

To a certain extent, the mechanism of "integration of arrest and prosecution" can avoid the shortcomings of the current mechanism of separating arrest and prosecution, improve the efficiency of case review, protect the relevant

rights of the parties, meet the new requirements of the trial-centered litigation system reform, and make the investigation and arrest activities more in line with the judicial rules; however, the academic circles still have concerns about the mode of "integration of arrest and prosecution", and raise relevant questions, so as to further improve the problems that may exist in the "integration of arrest and prosecution", and make the procedures more perfect, which is more conducive to the handling of cases and the protection of human rights.

A. Optimizing the Relationship of Arrest and Prosecution

As the severest among the compulsory measures of criminal law, arrest can not only prematurely detain socially harmful criminal suspects and prevent them from continuing to harm society, but also needs to release the criminals that are less socially harmful or unnecessary to be arrested or change the compulsory measures, so as to avoid the damage of personal rights and protect the legal rights of criminal suspects. Therefore, the academic circles have a close concern about how to use the right of arrest.

First of all, the "integration of arrest and prosecution" needs to correctly solve the problem of the proper use of arrest right. The primary concern of the academic circles for the case handling mechanism of "integration of arrest and prosecution" is that the arrest right loses its independent value. If the arrest directly affects the public prosecution action, and the scope and boundaries of its compulsory measures are blindly expanded, taking arresting measures in all cases that are not applicable for arrest will result in the abuse of the arrest right, which will undoubtedly seriously violate the rights of the suspects; on the other hand, if the prosecutors release the criminals who should be arrested out of the consideration of the examination and assessment of the procuratorial organs, and replace the original arrest criteria with more stringent prosecution standards, it will lead to an abnormal decline of arresting actions, and the criminals that should have been arrested get away, seriously affecting the development of follow-up criminal proceedings. It is worth mentioning that once the prosecutors have made an arrest decision, in order to prevent future responsibility claiming for misjudged cases, they will fall into a vicious cycle of "having to prosecute after arrest"; as a result, criminal suspects who are not necessary to be arrested are detained, and the suspects who are not necessary to be prosecuted are brought into the judicial trial process. According to the case analysis, when the prosecutors are handling cases, especially when the prosecutors engaged in investigation and supervision are arresting and prosecuting, the criminal suspect who can arrest or not arrest is often detained for professional inertia, and the arrest is given priority. Considering the location, this will also damage the legal rights of the suspect to a certain extent. Although this empirical practice will reduce the risk of prosecution, it will also hinder the conduct of criminal proceedings and affect the final outcome of the case. Those who lead to acquittal are punished as they should, and objectively cause judicial injustice.

First of all, it is suggested to strictly grasp the criteria for reviewing arrest and prosecution; the integration of arrest

and prosecution may fuzz up the standard limit: if the standard is raised, it will lead to an increase in crimes; if it is lowered, it will damage the personal freedom of the related persons. In order to avoid this phenomenon, procuratorial organs should strictly grasp the certification standards for arrest and prosecution, strictly prevent raising the standard of arrest in disguised form, and cannot confuse the two due to the integration of arrest and prosecution. The arrest must have the following three conditions: firstly, in terms of evidence conditions, evidence is required to prove the facts of crime; secondly, in terms of criminal liability, it is required to reach a penalty above imprisonment; thirdly, in terms of the necessity of arrest, requesting to reach the standard of guarantor pending trial is not enough to prevent the need for arrest in the event of social danger. The conditions for filing a public prosecution mainly include three aspects: firstly, in terms of evidence conditions, a thorough investigation of the facts of crime shall be made, and the evidence is true and sufficient; secondly, in terms of criminal liability, it is required to investigate the criminal liability according to law; thirdly, the jurisdiction should conform to the regulations if trial jurisdiction, and the standards between the two are strictly controlled.

Secondly, scientific performance assessment standards can be set for the prosecutors in post system to prevent the abuse of power, and the enthusiasm of procurators can be promoted through performance assessment; at the same time, it serves as a guideline to make the prosecutors review the arrest or prosecution fairly, which the key to improving work efficiency and stimulating team vitality. With the further promotion of the reform of the judicial responsibility system, establishing a scientific performance assessment system and setting reasonable assessment indicators is the key to promoting the integration of power and responsibility and guaranteeing the fairness of litigation. At present, there are still procuratorates pursuing "zero innocence, zero withdrawal, and zero wrong error arrest". Due to these indicators not conforming to procuratorial work rules, prosecutors may abuse their power or replace the legally required arrest criteria with more stringent prosecution criteria, which results in an abnormal rise in the non-arrest rate, excludes the unreasonable indicators in performance assessment of prosecutors, and does not take the arrest and end of investigation as the standard of work effectiveness.

Finally, due to the restrictions on personal freedom of arrest, procuratorial organs should pay attention to the duty of care during the review of arrest, prevent empiricism specially caused by rich experience, hold simulation contest, invite experts and scholars with professional knowledge to conduct lectures and training, so as to improve the prosecutors' vocational level. At the same time, with the development of the times, the professional knowledge of criminals is getting higher and higher, and their criminal means are becoming more and more professional; for professional cases accepted by the procuratorial organs, special personnel shall be assigned to review the arrest and prosecution, which is conducive to improving the efficiency of investigation work. The anti-investigation ability of criminals is getting stronger, and the cases are also

characterized by complexity and diversification; in the face of a new round of challenges, investigators accumulate rich experience and professional quality by studying professional knowledge and handling cases, and can adapt to changing circumstances during investigations, so as to better complete the work. It is suggested to increase the professional development of procurators in the fields of finance and internet.

B. Perfecting the Post System Procurator and Implementing Personal Responsibility System

First of all, a personal responsibility system is implemented to the post system prosecutors. Under the mode of "integration of arrest and prosecution", the review approval and review prosecution of the cases are handled by the same prosecutor, then two ways can be adopted: for simple and slight cases, one prosecutor conducts arrest and prosecution; for complicated and significant cases, prosecutors conduct arrest and prosecution by means of collegial system, so as to prevent corruption and reduce defect of the case.

The prosecutors can apply themselves, and the public security organ or criminal suspect can also apply. The collegial panel consists of three members, the leader is the prosecutor who is in charge of the case, and the other two are randomly selected in the office; the decision on whether to arrest is made by the group by voting, so that the result is neutral. Moreover, the case of prosecution with insufficient evidence is copied to the office of the department for record, so that the decision of the prosecutor to arrest and prosecute is combined with reward and punishment and appointment.

C. Balancing the Investigation Power and the Rights of the Defense

In criminal proceedings, the subject of the right to investigate the case enjoys multiple compulsory powers, while the defense enjoys less power and is often subject to various restrictions, resulting in an unequal position of right and power. Combining with the hot cases in the past two years, it is not difficult to find that the investigators often exercise their powers at will in the investigation stage, resulting in the loss of evidence or the occurrence of wrongful convictions. Therefore, it is necessary to balance the relationship between rights and powers and give equal power to the prosecution and the defense.

In the mode of "integration of arrest and prosecution", the protection of human rights cannot be neglected just for punishing crimes. Due to the integration of the two right subjects of review arrest and review prosecution, prosecutors have greater power in the "integration of arrest and prosecution", which may lead to the abuse of power, therefore, criminal suspects should be given certain remedies the same as the public security organs, and be given the right to apply for reconsidering the arrest decision made by the procuratorial organs; higher authorities should promptly review the reconsideration of the criminal suspect and the defender if it meets the reconsideration criteria, and promptly inform the relevant parties if it does not meet the standards.

IV. CONCLUSION

The "integration of arrest and prosecution" or "separation of arrest and prosecution" is not only a simple separation or combination of the two departments reviewing arrest and reviewing prosecution, but a combination of various aspects. The key is which model is more in line with the national conditions, meets the current judicial practice needs, and conforms to the target value of the reform of criminal justice system. Therefore, adopting the "integration of arrest and prosecution" is the only way that must be passed for the professional development of procuratorial organs at present, and a choice made by procuratorial organs in the long-term judicial practice. It is an inevitable choice under the new situation to adopt professional administrative bodies, have professionals of specialized departments handling different types of cases, integrate the review of arrest and the review of prosecution, optimize the allocation of judicial resources and improve the efficiency of procuratorial organs, and also an inevitable requirement for deepening the judicial reform, so as to more effectively fight crimes and protect the legitimate rights and interests of the parties, and it's the best choice in line with our actual national conditions and judicial rules at this stage.

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