

Study on the Whole Challenge System of Public Security and Judicial Authorities

Yuwen Quan

School of law, Shanxi University of Finance and Economics, Shanxi 030006, China

592065156@qq.com

Abstract. The challenge system is a kind of lawsuit system widely established in the legislative activities of modern countries, whose purpose is to ensure the legitimacy and fairness of the judicial procedure. Our country has designed individual avoidance of natural persons, which has some shortcomings compared with the whole challenge system of public security and judicial authorities. This paper deeply analyzes the basic theory of the present challenge system in criminal proceedings, discusses the necessity and feasibility of establishing the overall challenge system of public security and judicial authorities and puts forward some personal ideas on establishing the system.

Keywords: Criminal proceedings, the whole challenge system.

1. Introduction

The Criminal Procedure Law of China stipulates the challenge system, whose objects are judges, procurators, investigators, clerks, translators and appraisers. Therefore, it can be seen that these is a individual challenge system of natural persons, rather than the whole challenge system of legal persons of justice organizations. The existing individual challenge system can't completely eliminate reasonable doubt and guarantee fairness and justice in judicial practice. Based on the legal person nature of the justice organs and the practical needs of some cases, it is worth studying and discussing the overall challenge system of public security and judicial authorities in the criminal litigation activities.

2. The Basic Theory of the Challenge System in the Current Criminal Procedure Law

2.1 Definition of the Challenge System

The avoidance in the Criminal Procedure Law refers to the system that the judicial personnel in the criminal procedure should not participate in or withdraw from the criminal procedure activities because they have some interests or other special relationship with the case or the parties of the case, which may affect the fair handling. The Criminal Procedure Law sets up the challenge system to ensure the neutrality of the judges' position and the fairness of the results. It is a concrete expression of the principle of fair trial in criminal proceedings in "no one shall be the judge of his own case" and "the avoidance of interest's involvement".

2.2 Applicable Personnel of the Challenge System

Generally speaking, the scope of application of the challenge system includes the following types of people: investigators, procurators, judges, clerks, translators and appraisers. Besides, any member of the collegial panel or sole judge who has participated in the trial of the case in the same trial procedure of the case couldn't participate in the trial in any other procedure of the case. In addition, once transferred to a people's court to participate in the investigation, examination and prosecution of this case, the investigators and procurators shall withdraw and shall not serve as judges of this case. It can be seen that it is the individual avoidance.

2.3 Applicable Situations of the Challenge System

China's Criminal Procedure Law stipulates that litigants have the right to apply for withdrawal whether in public prosecution procedure, private prosecution procedure or incidental civil procedure. And in order to ensure a fair trial, the avoidance may be brought at any stage after the proceedings have begun. The legal situations of avoidance mainly include: firstly, the objects of withdrawal are close relatives; Secondly, he or his near relative has interests in the case; Then, people who has served as a witness, expert witness, defender or agent in this case; It also includes any other relationship with a party to the case that may affect the fair handling of the case; Finally, accepting invitations and gifts from the parties and their clients or meeting with the parties and their clients in violation of regulations.

3. The Necessity of the Whole Challenge of Public Security and Judicial Authorities

The present criminal challenge system in our country is actually an individual challenge system. The purpose of establishing the challenge system is to maintain fairness and justice, but the judicial practice challenges the ability of the existing challenge system to realize this value, showing some defects of this system. Therefore, it is necessary to establish the whole challenge system of public security and judicial organs.

3.1 Avoid Suspicion for the Sake of Justice

Firstly, in view of the relationship between public procuratorial organs and their officials, public security organs, procuratorates and courts are responsible for handling cases in the name of their organs. From the perspective of the entrusted relationship, the agent acts in the name of the principal, and the principal is responsible for the consequences of the act of the agent. Under this condition, once there is an interest relationship between the case and the unit where the case is handled, if it causes an impact on the economic interests or reputation of the unit, the handling personnel may be actively or passively affected by the interest thus lose impartiality. And in the actual situation people always put the public security officers and their units closely linked. Therefore, the objects of the old saying-"no one shall be a judge in his own case", which is required by the principle of natural justice, should not only refer to the specific case handlers in judicial activities, but also include the public security and judicial organs.

Secondly, from the point of view of procedural requirements, litigation activities aim to achieve the justice of results, and procedural justice is the guarantee of outcome justice. In judicial activities, procedural justice not only requires procedural transparency and efficiency, but also requires public security and judicial organs to maintain neutrality. The neutrality of public security and judicial organs is the basic element of the normal operation of their power and the realization of justice. The most important purpose of the establishment and operation of the challenge system is to exclude all the possible factors that affect impartiality and neutrality due to the interests of any party. However, the existing challenge system emphasizes the exclusion of specific investigators, procurators and judges. In practice, the staff of public security and judicial organs in China are closely related to their "units". In this case, merely excluding case workers to ensure the neutrality of the entire judicial activity can't meet the requirements of procedural justice. Therefore, it's necessary to stipulate the overall challenge system to maintain neutrality and procedural justice.

Thirdly, considering the negative aspect of power, the establishment of the overall challenge system is the best guarantee to curb abuse of power and the basis to ensure that the judiciary is fair in appearance, which is conducive to improving the public security and judicial authorities' credibility. Sometimes, even if the public security and judicial personnel who meet the legal reasons for withdrawal do so, it is difficult for other public security and judicial personnel to guarantee that they are not affected by those who have withdrawn. Public security and judicial organs are responsible for the investigation and trial of criminal cases, which plays a key role in the fate of victims, suspects and defendants. The law of our country has granted the public security and judicial organs extensive powers. Regarding that the power has great arbitrariness and wide space, it must be limited.

3.2 It is Conducive to Enhancing Judicial Confidence

Firstly, the challenge system is set up from the perspective of the evil nature of human's. It is supposed that once the staff of state organs are involved in the case, they will be partial. The legislator rationally realizes that as long as an objective official has some interest in the case, even if he is fair, the public will inevitably doubt the outcome of the case. Secondly, with the improvement of citizens' strong legal awareness, even if the judicial personnel evade, the parties are full of doubts about the fairness of the case handling, and they often don't believe the investigation of the public security, the prosecution of the procuratorate and the trial of the court. As long as a person has a certain interest in the case, it is rational for the public to doubt the impartiality of law enforcement. In order to eliminate the "reasonable doubt" and enhance the persuasion of the impartiality of the results, we must establish the whole challenge system. This provides a realistic opportunity for the parties to obtain a fair judgment, which is conducive to building people's trust and belief in the judiciary, better safeguarding the judicial authority, and increasing the confidence of the public security and judicial organs in fighting crimes and protecting the legitimate rights and interests of citizens.

3.3 To Save Judicial Resources

The establishment of the overall challenge system of public security and judicial authorities can fundamentally kill the possible abuse of rights and make them conduct investigation and trial activities objectively and impartially. Such procedural justice can eliminate the concerns of the parties. As an important tool of the people's democratic dictatorship, it can better protect human rights and objectively satisfy the interests of the parties. It is also helpful to improve the accuracy of case investigation, so that the parties can fully exercise their rights and fulfill their obligations in the judicial process, and avoid the crisis of trust in judicial personnel and judgment results. This system can also better deal with the relationship between the parties and provide possibility and convenience for the smooth implementation of the rulings. In general, it can reduce unnecessary appeals, save judicial resources and improve judicial efficiency.

4. The Feasibility of the Whole Challenge of Public Security and Judicial Authorities

4.1 In Theory

In terms of the original intention of the challenge system, it does not exclude the whole avoidance of legal persons. The system originates from the principle of "natural justice" in ancient Rome. In order to pursue litigant justice, such a system is set up. When the public security and judicial organs need to avoid it as a whole, of course they should do so. From the legislative point of view, the Criminal Procedure Law does not oppose the overall avoidance. And the whole system is made up of parts. Although the current criminal challenge system in China is personal challenge, the public security and judicial organs are a collection of investigators. If all the personnel of a legal person in the public security and judicial authorities should be avoided, then the organs obviously should be avoided, which is a natural extension of theory.

4.2 In Reality

With the development of transportation, communication and information technology, the regional economic difficulties and investigation difficulties brought by the overall avoidance have been solved, which makes the implementation of the overall avoidance of public security and judicial organs have a realistic basis. Although China's current law has not stipulated the overall challenge system, it does not mean that there is no overall withdrawal in judicial practice. For example, when all the members of the public security organ need to withdraw, collective withdrawal will occur. And that would cause a transfer of jurisdiction. The overall challenge system of public security and judicial authorities is reflected as the jurisdiction system in reality. The different jurisdiction mechanism which has been adopted in the judicial practice of our country provides effective evidences for the legislation to

clarify the whole avoidance. In order to change the phenomenon that the incomplete avoidance affects the fair trial of a case, the way of remote jurisdiction solves the problem of continuity of case handling caused by the overall avoidance, and also guarantees the continuous state of realizing the pursuit of just value in case handling, which provides support for the establishment of the overall avoidance.

5. Conception of the Overall Challenge System of Public Security and Judicial Authorities

Referring to the legislative experience of foreign countries and combining with the actual situation of China, from my point of view, the situations of overall avoidance in criminal proceedings are as follows.

1. One of the parties or the defendant in the criminal proceedings shall be the chief or deputy presidents of the court, the chief or deputy procurators of the procuratorate, the chief or deputy procurators of the public security bureau or other leaders and decision-makers of the case-handling organs. Under such circumstances, the case handling personnel of the court, procuratorate or public security organ may affect the fair handling of the case due to the interest relationship between the leaders and the unit they work for. Therefore, the handling of the case by the unit where the parties and defendants work should be avoided as a whole;

2. The participation of a court, procuratorate or public security organ as a party in litigation (for example, the unit is the injured party in a criminal case) or the criminal case is related to the staff of the unit, which may affect the staff handling the case;

3. One of the parties is a local government or other administrative organ that has close relations with the court, procuratorate or public security organ, which may affect the fairness of the case;

4. There are other legitimate reasons for doubt, which may affect the fair handling of the case by the court, procuratorate or public security organ.

6. Conclusion

The core value of challenge system is to ensure judicial justice, because justice is the soul of the litigation system. The establishment of the overall challenge system of public security and judicial authorities will expand the applicable objects of avoidance from individuals to organs, which will make public security organs, procuratorates and courts that will affect judicial justice withdraw from the investigation and trial activities of cases. This system will play an important role in the fairness and neutrality of litigation activities. To establish the overall challenge system is not only the objective need of social development, but also has the legitimacy to ensure the realization of judicial justice.

References

- [1]. Zhang Xue. The Overall Withdrawal of the Public Security Organs [D]. Yunnan: Kunming University of Science and Technology, 2012.
- [2]. Dai Shaoyong, Gu Yueli. The Whole Evasion of Case Handling Organs in Criminal Procedure [N]. Journal of Fujian Police Academy, 2009(6).
- [3]. Liu Ming. The Challenge System of Criminal Proceedings and Its Improvement [N]. Journal of Jixi University, 2013(2).
- [4]. Wang Shuhua. An Analysis of the Defects of Criminal Challenge System and Its Reconstruction [J]. Academic Exploration, 2013(5):74-76.
- [5]. Liu Jialiang, Nie Guangliang. An analysis on Improvement of Criminal Challenge System [N]. Journal of Guangdong Institute of Public Administration, 2005(6).
- [6]. Chen Weidong. Law of Criminal Procedure [M]. Beijing: Higher Education Press, 2017.