

Some Issues Concerning Civil Procuratorial Supervision—Take *the Rules of Civil Litigation Supervision of the People's Procuratorate* as an Object

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Abstract: *The Rules for Supervision of Civil Proceedings by People's Procuratorates* in recently published that has modified and improved the period for parties to apply for procuratorial supervision in civil procuratorial supervision, the conditions for acceptance of cases, the scope of supervision initiated ex officio, the scope of application of procuratorial recommendations, and the procedures for hearing and investigation and verification. However, some of the provisions of the new code have omissions, including the right to investigate and verify the provisions of the rough, hearing procedures also need to be improved. To improve the civil prosecution supervision system, Article 20 of the new Rules should be amended to improve the civil prosecution investigation and verification system, and improve the hearing procedures and their supporting mechanisms.

Keywords: *civil prosecution supervision, investigation and verification rights, hearing procedures*

1. Introduction

The Supreme People's Procuratorate announced the Rules for Supervision of Civil Proceedings by People's Procuratorates (hereinafter referred to as the new Rules) on July 26. Compared with the Rules for Supervision of Civil Proceedings by People's Procuratorates (Trial) (hereinafter referred to as the Rules (Trial)), the new Rules improve the supervision procedures, case scope, and case handling mechanism of civil procuratorial supervision, but in general, There are still some problems in the operation of China's civil prosecution supervision system. For example, there are omissions in some of the provisions, the investigation and verification system is sloppy, the hearing system is not perfect, and so on. This paper proposes countermeasures to improve the civil prosecution supervision system in China based on the problems of the current civil prosecution supervision system in China.

2. The new "Rules" of the revised and improved

2.1 Clarify the period of time for parties to apply for prosecutorial supervision

Article 209 of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the Civil Procedure Law) provides that if the people's court rejects an application for retrial, if the people's court fails to make a ruling on the application for retrial after the deadline, and if the retrial judgment or ruling is obviously wrong, the party may apply to the people's procuratorate for a protest or procuratorial suggestion. The Civil Procedure Law gives the parties the right to obtain relief by way of applying for procuratorial supervision. In order to maintain the stability of social relations, urge the parties to actively apply to the procuratorate for supervision, and prevent the parties from "lying asleep on their rights", it is reasonable to limit the time for the parties to apply for procuratorial supervision. However, the Civil Procedure Law and the Rules (for Trial Implementation) do not have relevant provisions. The Supreme People's Procuratorate Feng Xiaoguang's speech at the press conference indicated that the reason for the introduction to this provision is that for time-honored cases, the parties are often unable to provide effective evidence, and it is difficult for the procuratorate to find out the facts, so it is necessary to give a certain limit to the period during which the parties can apply for procuratorial supervision. Therefore, the new "Rules" clearly parties to the people's procuratorate to apply for procuratorial supervision should be made within two years, and the period for the unchanged period, to fill the gap in the relevant laws.

2.2 The acceptance of changes in conditions

First, for the parties to apply for retrial beyond the statutory period, according to the "Rules (Trial)" provisions of the People's Procuratorate shall not be accepted, while the new "Rules" to take into account the complexities of real life, to make a more reasonable exception: "except for reasons not attributable to themselves.

Second, Article 31 of the Rules (for Trial Implementation) provides for seven situations in which a party's application for procuratorial supervision is not accepted, the second paragraph of which reads, "The people's court is examining the application for civil retrial, except for those who have not made a ruling on the application for retrial for more than three months. According to this provision, a party can apply for procuratorial supervision if the court does not make a decision on the application for retrial within three months. Considering the current situation of "many cases and few people" in Chinese courts, the three-month period is not in line with the objective reality, therefore, the new Rules amend the paragraph to "the people's court is reviewing the civil re-trial application within the legal period", which eases the pressure on the court. The pressure of handling cases.

Third, the new Rules have increased the channels for parties to obtain relief. According to Article 31 of the new Rules, if a party does not accept a case that should be accepted by the procuratorate, the party may apply for supervision by the procuratorate at a higher level. The higher-level procuratorate may, after review, direct the lower-level procuratorate to accept the case or, if necessary, to accept it directly. In addition, the new "Rules" clearly for the application for supervision of the case, after the procuratorate made a decision not to support supervision, the parties have the right to apply for review, and clarify the exercise of that right to the period, conditions and procedures.

Fourth, the new "Rules" clarifies the circumstances of "follow-up supervision". Follow-up supervision is one of the circumstances under which the People's Procuratorate can supervise ex officio, but the Rules do not provide for specific circumstances of "follow-up supervision. Since the supervision of the procuratorate involves the authority of the court and the efficiency of the judiciary, the Rules do not provide for the specific circumstances of "follow-up supervision", resulting in almost no "follow-up supervision" in practice, and the provision is actually hollow. The new "Rules" clarifies the specific circumstances of "follow-up supervision", enhancing the operability of the provision.

2.3 Expanded the scope of ex officio supervision

The Rules (for Trial Implementation) provide for three types of prosecutors to initiate supervision ex officio, such as "damage to the state or public interest," "corruption and violation of the law by trial and execution personnel," and "follow-up supervision is required by law. Supervision procedures. However, the scope of the procuratorate to initiate supervision ex officio for these three cases does not meet the objective needs of judicial practice, so the new "Rules" on the basis of this added three: first, false litigation cases, the second is a public interest litigation case, the verdict, ruling, mediation is really wrong, the trial judge has illegal behavior, or the implementation of illegal activities, the third is a significant social impact is really necessary to carry out supervision. The supervision. In addition, the new "Rules" also provides that the procuratorial organs of civil cases initiated ex officio supervision procedures, not subject to whether the parties apply for retrial. The new "Rules" further strengthen the legal supervision responsibilities of the procuratorial organs.

2.4 Expanded scope of application of prosecution recommendations

According to the "Rules (Trial)", the "decision is the same level of court retrial or the trial committee after discussion and decision", "the application of the law is wrong", "the trial staff corruption, bribery, corruption, abuse of justice "The way to supervise the cases can only be filed by the higher-level procuratorate to resist prosecution. The new "Rules" provide that these cases should generally be filed by the higher-level procuratorate to protest, but appropriate to be corrected by the same level procuratorate, the same level people's procuratorate can file a retrial procuratorial proposal. The former must be initiated by the court, while the latter is in the hands of the court to decide whether to start a retrial. Therefore, the procuratorial suggestion has the characteristics of "flexible supervision", the new "rules" to expand the scope of application of the procuratorial suggestion, to a certain extent, to ease the tension between the court and the procuratorate.

2.5 Improve the procedures for hearing and investigation and verification

First, improve the hearing procedures. In view of the lack of personal experience of the procuratorial organs, for complex and difficult cases rely only on written examination is difficult to find out the facts of the case, can not meet the objective needs of procuratorial supervision, in order to ensure judicial impartiality, to protect the quality of the case, it is necessary, should be organized by the procuratorial organs hearing procedures. Compared with the "Rules (Trial)", the new "Rules" of the procuratorial organs to organize the hearing procedures have been optimized. On the one hand, it is clear that the hearing of civil prosecution supervision cases should generally be open, except for those involving state secrets, personal privacy and other provisions of the law, on the other hand, the steps of the new "Rules" hearing procedures are clearer than the "Rules (Trial)".

Second, the optimization of the investigation and verification procedures. The new Rules clarify that the procuratorial authorities can access the trial sub-files, increase the provisions of the procuratorial authorities to the banking and financial institutions to investigate and verify the evidence, and may assign procuratorial technical personnel to conduct special reviews of technical evidence. In contrast to the original file, the sub-files may contain confidential information, but they may also breed corruption, and usually prosecutors' requests to investigate the sub-files are often denied by the courts. In addition, it is unclear whether the prosecutor's office can investigate and obtain evidence from banking and financial institutions, which in practice has led to heavy resistance to the exercise of the prosecutor's authority to investigate and verify. The new Rules clarify these issues and enhance the guidelines for the exercise of the investigation and verification power of the Code.

Third, the effectiveness of the procuratorate's access to evidence is clarified. The effectiveness of the procuratorate's access to evidence has always been unclear, and the new Rules clarify the legal status of its evidentiary materials, i.e., whether to be admitted in the retrial proceedings by the trial judge after cross-examination by both parties, as judged by the trial judge in accordance with the rules of evidence.

3. The current problems of civil prosecution supervision

3.1 The new "rules" part of the provisions of the omission

Article 209(1) of the Civil Procedure Law stipulates that the circumstances under which a party may apply for procuratorial supervision include "if the people's court rejects the application for retrial," "if the people's court fails to make a ruling on the application for retrial after the deadline," and "if the judgment or ruling of the retrial is obviously wrong. The ruling has obvious errors" three. According to the interpretation of the system, the first paragraph of Article 20 of the new Rules and the first paragraph of Article 209 of the Civil Procedure Law should be the first People's Procuratorate to apply for supervision within two years from the date of the People's Court's ruling to reject the application for retrial or the legal effect of the retrial verdict or ruling", which is not related to "the People's Court's overdue ruling on the application for retrial". There is no content corresponding to the situation that "the people's court has not made a ruling on the application for retrial after the deadline". In addition, the new Rules do not take into account the situation where the re-trial judgment or ruling is not served on the parties in accordance with the law. This situation seems to be more reasonable from the date when the parties know or should know the judgment or ruling.

3.2 The right to investigate and verify the provisions of sloppy

Although this revision of the new "Rules" on civil prosecution supervision and investigation and verification of the power of certain optimization, but in general, the current system of civil prosecution supervision and investigation and verification of China is not only fragmented, and in the supervision process is prone to resistance from all sides. First, in terms of the scope of supervision, civil prosecutorial supervision is a comprehensive supervision. Different types of prosecutorial supervision present different characteristics, so it is necessary to distinguish the exercise of investigative powers in different types of procedures. However, the current institutional arrangement does not make this distinction.[1] Secondly, the provisions on the power of investigation and verification of civil procuratorial supervision are scattered in the Civil Procedure Law, the Organic Law of the People's Procuratorates and the new Rules, among which Article 210 of the Civil Procedure Law only provides for the principle of civil procuratorial investigation and verification power, and the provisions of the Organic Law of the People's Procuratorates on the power of investigation and verification are uniformly applied to the "four major

procuratorial The new "Rules" are only internal norms of the procuratorial system, with a low level of effectiveness, making it difficult to form effective constraints on other organs, not to mention that the relevant provisions of the new "Rules" themselves are not perfect. Third, the exercise of civil prosecution investigation and verification powers lack of safeguards.[2] Article 21 of the Organic Law of the People's Procuratorate stipulates that the relevant units shall cooperate with the people's procuratorate in exercising the right of investigation and verification, but the provision only has the conditions and modes of behavior, and lacks corresponding legal consequences, so in practice it is very easy to be fictitious. Article 71 of the new Rules, despite the increase in legal consequences in the normative structure, does not have direct compulsion, and the deterrent effect of "making procuratorial recommendations to higher authorities" is far from sufficient, because it is difficult to ensure whether the procuratorial recommendations are adopted.[3]

3.3 The urgent need to improve the hearing process

According to the research of scholars, the overall application rate of the hearing procedures of procuratorial organs at all levels is low[4], and one of the important reasons for this phenomenon is the sloppy system. Hearing system should be a complete system, the new "Rules" only construct the basic framework of the civil prosecution hearing system, the scope of the hearing case, the selection of the hearing officer, the effectiveness of the hearing officer's opinion, the suspension, termination, supervision and hearing relief of the hearing process are not involved.[5]

4. Suggestions for improving the civil prosecution and supervision system

4.1 To amend the new "Rules" Article 20

According to the correspondence with Article 209 of the Civil Procedure Law, this article proposes to amend the first paragraph of Article 20 of the new Rules to read "The parties shall apply to the people's procuratorate for supervision in accordance with the first paragraph of Article 19 of these Rules, on the date when the people's court makes a ruling rejecting the application for retrial or a ruling on retrial, the date when the deadline for the people's court to make a ruling on the application for retrial expires, or the date when the people's court makes a ruling on the application for retrial. Within two years from the date the ruling takes legal effect." In addition, a new paragraph should be added: "If the judgment or ruling of the retrial has not been served on the party concerned in accordance with the law, the party concerned shall submit the judgment or ruling of the retrial within two years from the date the party knows or should know about it."

4.2 Improve the civil prosecution investigation and verification system

1)The establishment of the right to investigate and verify the rules of classification and exercise

Based on the limited judicial resources and the consideration of avoiding the impact of civil prosecutorial supervision on the reciprocal relationship between the parties, the civil prosecutorial investigation and verification power, as a subordinate power of civil prosecutorial supervision, should be exercised in accordance with the principle of modesty and within the limits of necessity. Based on the procedures under supervision, civil prosecutorial supervision can be divided into supervision of adjudication results, supervision of enforcement procedures, and supervision of judicial violations, among which supervision of adjudication results can be divided into supervision of purely private adjudication results and supervision of adjudication results involving national interests, public interests or public order. Different types of supervision have different needs for the right of investigation and verification. For example, for the supervision of purely private interests, the exercise of the right of investigation and verification should be minimized in order to stabilize the reciprocal relationship between the parties in the litigation and avoid the alienation of the objectification of the parties, and the consent of the parties should be obtained if the parties need to investigate and verify. In other types of supervision, the exercise of the right to investigate and verify can be more active and expansive. In terms of the initiation of procedures, in purely private litigation in the investigation and verification of the application of the parties to start for the appropriate, other types of investigation and verification by the procuratorial authorities are generally more appropriate to start ex officio. In addition, different types of supervision in the means of investigation and verification should also be different. For example, the trial judge's illegal behavior is often hidden, so the means of investigation and verification can be more flexible.

2) Increase the rigidity of the right to investigate and verify

In response to the lack of safeguards for civil prosecutorial investigation and verification powers, this paper clarifies through legislation the responsibility for obstructing the exercise of investigation and verification powers. Specifically, the procuratorate can be given the power to take coercive measures such as fines and detention to enhance the rigidity of the investigation and verification power.

4.3 Sound hearing procedures and their supporting mechanisms

Hearing procedures have considerable potential in safeguarding the quality of cases, resolving disputes and conflicts, and supervising and restricting prosecutorial power, but the coarseness of the hearing system limits the function of hearing procedures. Accurate supervision of the reasoning requires the hearing process must be optimized design. First, improve the hearing process. The new "Rules" should increase the scope of hearing cases, hearing procedures to start the standard, the effectiveness of the hearing officer's opinion, the suspension of the hearing process, the end of the provisions. Second, optimize the hearing relief mechanism. Hearing relief mechanism to protect the legitimate interests of the parties, to ensure the effectiveness of the hearing process has an important role. Specifically, the parties should enjoy the right to apply for recusal of the hearing officer, the right to object to the hearing results and the right to apply for a new hearing, etc. Third, the establishment of the hearing agent mechanism. Hearing procedures involved in the case is often difficult and complex, the impact is significant, so there should be an agent to participate. For parties who do not have the ability to appoint a representative, they should be provided with legal assistance.

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