

The Law Connection Between Archives Administrative Law Enforcement and Criminal Justice

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Abstract— *The connection between archives administrative law enforcement and criminal justice limits the smooth progress of archives security work in China. At present, the main problems in the connection of execution are the insufficient legislative connection between the new Archives Law and the current Criminal Law, the poor case transfer, the obstacles of evidence conversion and the lack of procuratorial supervision. In order to make the efficient operation of the execution connection system in the field of archives security, and effectively crack down on the illegal and criminal acts of archives, it is necessary to further adjust the legislative system of execution connection, improve the case transfer mechanism, establish the evidence conversion mechanism, and improve the procuratorial supervision system, in order to ensure the security of archives and promote the further development of archives cause.*

Keywords— *Archives, administrative law enforcement, criminal justice, execution and cohesion.*

I. INTRODUCTION

In recent years, with the increasing attention of the security of archives, the status of archives work in national affairs is gradually prominent. However, in the judicial practice, the connection between administrative law enforcement and criminal justice in the field of archives (hereinafter referred to as "execution connection") always restrict the smooth progress of archives work. Using the China Judicial Documents network and Peking University Magic weapon as the data source, from the first civil dispute case involving personnel files (August 4, 1998) to March 31, 2023, a total of irrelevant and duplicate cases were retrieved. Among them, the number of civil cases is the largest, or 1196, or 60.77%, 753 administrative cases, or 38.26%, and the smallest criminal cases were 19, accounting for 0.97%. From the perspective of the current situation of file execution connection, the dispute cases generally show a large number of file violations but the lack of criminal punishment, which directly shows the dilemma of poor execution connection in the field of file security. Improving the connection mechanism between archives administrative law enforcement and criminal justice is an important problem that needs to be solved in archives work.

II. THE REAL DILEMMA OF EXECUTION COHESION

In 2021, the General Office of the CPC Central Committee and the General Office of the State Council issued the 14th Five-Year Plan for the Development of National Archives, which pointed out that in order to "improve the laws, regulations and standards of archives", we must "strictly enforce the law of archives and strengthen the popularization of the law. Improve the effective mechanism for the implementation of archives laws and regulations, and improve the level of archives law enforcement. "Standardizing the connection of execution is the due meaning of perfecting the archives system, and also the internal requirement of improving the level of archives law enforcement. Under the background of

the current legal system, in the process of law enforcement, if the administrative organs think that the case is suspected of crime, the next step should be transferred to the judicial organs for processing, and the archives administrative law enforcement organs and criminal judicial organs should do their responsibilities, cooperate with each other, and connect smoothly. However, most of the execution connection is involved in the economic field, and in the economic transition period, the administrative law enforcement and criminal justice often appear poor and disconnected phenomenon. This special background leads to the difficulty of prosecution of archival crimes, and the phenomenon of "four more and four less" of archival crimes is more prominent in judicial practice. There are many reasons for the difficulty of prosecuting archival crimes, such as the concealment and social factors, such as the social and economic development, the poor understanding of archival crimes, and the institutional factors, namely the poor connection between archives administrative law enforcement and criminal justice. The institutional reasons in the field of archival security are usually considered as the most direct reason that makes archival crime not easy to prosecute.

To a large extent, the realistic dilemma of execution connection directly comes from the administrative attribute of archival crime. The theory of foreign criminal law classifies the types of punishment according to the criminal nature of the criminal person, among which, the administrative illegal act is called the administrative criminal law. Compared with the ordinary department law, the legal relationship of administrative criminal law is relatively more complicated, and the subject involved is generally both the party of criminal case and the counterpart of administrative case; the object of administrative criminal law may be both the individual rights protected by criminal law and the social public interest protected by administrative law; the administrative crime prohibited by administrative criminal law is both illegal or criminal behavior. The administrative attribute of archival crime cases makes it necessary to judge whether the harmful

behavior violates the relevant requirements of the administrative law first when determining whether the harmful behavior of archives constitutes a crime. This makes the prosecution of archival crimes usually based on the intervention of archival administrative law enforcement, and administrative law enforcement has become a very necessary link in archival criminal justice. Therefore, the phenomenon of local administrative means interfering in criminal justice in the execution connection is easy to produce, and the archival crime cases cannot be effectively transferred from administrative organs to criminal judicial organs, and the execution connection encounters practical difficulties.

III. THE MAIN LEGAL PROBLEMS EXISTING IN THE CONNECTION OF EXECUTION

The practical dilemma of execution connection not only directly restricts the development of execution connection work, but also is not conducive to the rapid and effective crackdown on archives crimes, which will seriously affect the security and protection of archives. There are many problems in the process of execution connection, for example, the contradiction between archives security protection and social and economic development largely restricts the connection of execution; the law enforcement personnel for criminal responsibility; the legal system of file security connection has defects..... It should be pointed out that the defect of the legal system of execution connection is the most critical problem that leads to the poor connection of execution in judicial practice. The author now summarizes the main legal problems existing in the execution connection into the following four aspects:

A. Lack of legislative cohesion

Whether it is archives illegal behavior or archives criminal behavior, the common point will cause the infringement of archives security, but the degree of infringement of archives security is different from quantitative change to qualitative change. In addition, because the archival crime has the double illegality of administrative illegality and criminal illegality, and the archival crime is also known as the legal criminal or administrative criminal, to some extent, it shows that the archives administrative law enforcement is the necessary procedure of the archive's criminal justice. Therefore, the regulation of archives crime needs the archives administrative law as the prelaw, and the criminal law as the backing and guarantee of the archives administrative law. The relationship between administrative illegal acts and archives crimes in the field of archives security determines that the "execution connection" between archives administrative law enforcement and criminal justice needs to be legislative connection.

However, China has been lacking of special legislation in this regard. The new "Archives Law" in article 48 and article 50 of the content of a total of 11 kinds of illegal archives, but these two simple provisions can not exhaust all archives illegal acts, in addition, the current criminal law can not effectively regulate each kind of social harmful archives illegal behavior. For example, the new "archives law" article 48 first, second, 6,7 of "lost belong to the state archives" "spread belong to the archives of the state" "overdue not transfer archives" "file not

open to the society and provide the use of" such as illegal behavior, achieve the circumstances or serious consequences, in accordance with the new "archives law" article 51 "constitutes a crime, shall be investigated for punishment in accordance with the law". However, the current "Criminal Law" only explicitly stipulates two explicit archives crimes, namely the crime of seizing and stealing state-owned archives and the provisions of grabbing and stealing state-owned archives and the crime of selling and transferring state-owned archives without authorization.

Thus it can be seen that the criminal law has no crime corresponding to the criminal behavior that should be investigated in the archives law, thus causing the imbalance of execution cohesion. In addition, from the perspective of legal liability, the provisions of the warning, fine and other administrative penalties; for the archives law, the provisions of the warning, demerit recording, demotion, dismissal and other punishment, and the current criminal law of archives crime only criminal detention and fixed-term imprisonment. In contrast, the punishment of archival crimes is very single and can not effectively crack down on archival crimes. The author thinks that it is also very necessary to set up the property punishment and the qualification punishment for the punishment of archival crimes.

B. The transfer of the case is not smooth

Whether the archives illegal and criminal cases can be smoothly from the archives administrative law enforcement stage to the criminal justice stage is the key to the smooth connection between the archives administrative law enforcement and criminal justice, but also the prerequisite to determine whether the criminal judicial procedure can be launched in time. In addition, the administrative attribute of archival crime determines to a large extent that the archival department acts as the initiator of the transferred archival crime case. After discovering the illegal file law case, the case will be transferred to the public security organ for investigation, and after the investigation, the transfer to the procuratorial organ, and the procuratorial organ will file the public prosecution and enter the trial procedure. Thus, it can be seen that in the whole process of archival crime case transfer, the public security organs are in an important position of "connecting the past and the future".

According to the Provisions on The Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs, amended by The State Council in 2020, the public security organs only need to "examine" the transferred cases suspected of archival crimes, rather than "accepting cases in accordance with the law". This leads to that in practice, the public security organs are negligent in performing the duty of "careful review", and often return the case to the archives department for the reasons of "insufficient evidence" and "incomplete materials", or many cases of returning and transferring, and closing the case with punishment instead of punishment. In the whole process of handling cases, only the cooperation of all departments can realize the smooth access of the case transfer. If any link has problems, the case transfer will be blocked. Suspected of file crime cases after transferred to public security organs, not

normal into the case investigation stage, the case on this node, eventually cannot be brought into the judicial process, delay case timing, greatly increase the difficulty of the case processing and burden, the case finally out, this kind of situation is not conducive to combat archives crime, easy to cause bad social influence.

In addition, because the relevant authorities have not unified understanding of the case prosecution standards, there are differences in understanding, which makes it more difficult to transfer the case of suspected crimes to operate. For example, in the Provisions on the Transfer of Suspected Criminal Cases by Persons by Administrative Law Enforcement Organs, the standard of suspected criminal cases can be summarized as "illegal facts + criminal suspicion + criminal investigation", while the Criminal Procedure Law stipulates that the public security organs should file "criminal facts + criminal investigation to be investigated for punishment". In contrast, the standard of transfer of suspected criminal cases is quite different from the standard of public security organs.

C. There are barriers to evidence conversion

No matter in the field of archives administrative law enforcement or in the field of criminal justice, the identification of evidence is very important. Generally speaking, the evidence collected in the field of archives administration can be used to directly identify the illegal facts of archives; the evidence collected in the field of criminal justice can be directly used to identify the criminal facts of archives. When archives illegal cases were transferred to the judicial organs, the judicial organs, the case as a file crime cases and processing, an urgent need to solve the evidence collected in the process of archives administrative law enforcement can be directly applicable to the stage of criminal justice, it is related to the archives administrative law enforcement and criminal justice can effectively cohesion. According to the relevant provisions of the Criminal Procedure Law, the evidence materials collected at the stage of administrative law enforcement, including material evidence, documentary evidence, audio-visual materials, electronic data and other data, can be used as criminal evidence. This provides a legal basis for the trial of evidence conversion in the execution connection. However, in the judicial practice, there are still many difficulties in realizing the evidence conversion in the execution connection to be smooth and smooth.

In the field of archives, the types and forms of archival administrative evidence and criminal evidence are not completely corresponding, and a considerable part of the evidence is difficult to convert. As we all know, the types and forms of evidence must be legal, which means that the archival administrative evidence must have the corresponding types of criminal evidence only after the conversion is the legal and effective criminal evidence. In the Interim Provisions on the Procedures of Archival Administrative Punishment, the archival administrative evidence also includes the two types: the statement of the parties and the on-site record. These two types of archival administrative evidence cannot be found with the corresponding types of evidence in the criminal evidence. In this case, it will undoubtedly make the conversion of archival

administrative evidence and criminal evidence is not smooth, and then lead to a considerable part of the evidence encountered difficulties in the conversion. On the one hand, according to the relevant provisions of the Criminal Procedure Law, the name of the parties is decomposed into "victim's statement" and "confession and defense of the criminal suspect and defendant". In addition to the differences in the name of the administrative evidence in the file and the criminal evidence, it is also "obviously different" in the proof force. On the other hand, the Criminal Procedure Law only stipulates that "inspection, procuratorial, identification, investigation experiment and other records", while the "on-site record" in the archival administrative evidence is not the type of legal evidence stipulated in the Criminal Procedure Law. There are obvious differences in the two types of evidence in the evidence collection procedure. The on-site inspection and evidence collection procedures of criminal investigators should be far stricter than the on-site inspection procedures of archives administrative law enforcement personnel.

The standardization of administrative evidence collection in the field of archives is insufficient, and it is difficult for the judicial organs to accept the administrative evidence of archives. The archives law enforcement departments usually take "identifying the illegal acts and making administrative punishment" as the purpose of obtaining evidence, while the public security organs take "investigating the criminal responsibility" as the purpose of obtaining evidence. In addition to the difference in the purpose of evidence collection, the evidence collection ability of the archives law enforcement department is still in a very immature stage compared with the judicial organs. In terms of evidence collection technology, method and effectiveness, it cannot meet the standard of judicial organs as the evidence of conviction and sentencing, thus affecting the conversion and identification of evidence in the connection of execution.

Third, the identification standard of archival administrative evidence is far lower than that of criminal evidence. Criminal procedure law on the recognition of criminal evidence in addition to meet the basic requirements of the "verified", but also by "illegal evidence exclusion rule", "reinforcing evidence rules" rules, and the requirement of archives law enforcement evidence, in addition to the archives administrative punishment program temporarily mentioned must be "verified", without any normative legal documents to file law enforcement evidence proof.

D. Procuratorial supervision is weak

As the legal supervision organ exercising the state procuratorial power, the procuratorate should play an efficient supervisory role in the connection of the execution of archival illegal and criminal cases. However, the particularity of archival illegal and criminal cases and the current imperfect legal system often make the procuratorial supervision power of the procuratorate unable to reach the due strength, and cannot carry out external supervision and restriction on the execution connection work, and the procuratorial supervision function of the procuratorate exists in name only. Judicial practice, the people's procuratorate in the exercise of supervision, often show

a certain degree of passive, embodied in many cases to enter the procuratorial supervision within the field of vision, must first through individuals or relevant units to report, but in reality, the main source of information and channel is the competent department of archives. In addition, the administrative law enforcement itself is relatively closed, which makes the archives department in charge of the public security organs to transfer and undertake cases, usually do not timely and actively notify the procuratorial organs. The procuratorial organs cannot obtain information from other channels, and finally fall into the situation of "information island". In addition, when the cases of archival crimes are reported by the masses, the victims often have little enthusiasm to report or reflect such cases based on the consideration of personal safety. In this situation, it is more difficult to start the procuratorial supervision procedure. The direct result of this situation is that some cases of illegal and criminal files that require the procuratorate to further intervene in the power of supervision cannot be effectively supervised because they cannot enter the supervision scope of the procuratorate in time.

In fact, the legal supervision function of China's procuratorate is mainly played in the field of judicial practice, and is further reflected in a large number of civil, criminal and administrative litigation. In the field of archives administrative law enforcement, the supervisory role of procuratorial organs is often empty and the effect is not good. On the one hand, the "written procuratorial supervision" method often used by the procuratorial organs cannot effectively identify illegal data; on the other hand, many ways that the procuratorial organs exercise the power of supervision lack compulsion, including case inquiry, procuratorial suggestions, and inspection opinions. In practice, the non-mandatory supervision mode has some defects.

For example, when the procuratorate puts forward legal supervision opinions to the administrative law enforcement organ, the archives department takes an attitude of not replying or refusing to accept this, the procuratorial organ can do nothing. In addition, the procuratorial organs on the public security organs also lack of coercion. When the public security organ should file the case but does not file the case, does not request reconsideration, review, or should cancel the case but does not cancel the case, the procuratorial organ will issue a notice to correct the violation. However, the notice of the procuratorial organs to correct the illegal law is not mandatory, and the public security organs often do not pay much attention to it, or even refuse to correct it, which leads to the inspection and supervision cannot be implemented in practice, and the effect of supervision is greatly reduced. Finally, the exercise of the supervision power of the procuratorial organs often focuses on the duty illegal and criminal acts of the archival law enforcement personnel and the judicial personnel, and the operation of the execution connection work is not fully taken into account.

IV. THE PATH OF PERFECTING THE EXECUTION CONNECTION MECHANISM

Objectively speaking, both archives illegal and criminal acts are acts that infringe on the benefits of the archives security law,

and their social harm is gradually increasing, which provides the possibility for the internal unity and interconnection of administrative law enforcement and criminal justice. At present, under the interaction of many factors in the field of archives in China, the operation of the execution connection mechanism is not smooth. In order to solve the main legal problems in the connection of execution proposed above and better promote the connection between archives administrative law enforcement and criminal justice, it is necessary to further improve the legal system and system of the connection of archives safe execution in China.

A. Adjust the legislative system of execution and cohesion

Legislation is the main prerequisite of law enforcement and justice. With the continuous improvement of legislative technology and the continuous accumulation of legislative experience, the archives administrative legislation and criminal justice should be constantly adjusted, and the specialized legal norms on the connection of file security execution should be promulgated, in order to achieve the effect of seamless connection of archives execution. Each legislative subject can consider from the following aspects: First, the Standing Committee of the National People's Congress can reconstruct the procedures and methods of execution connection and investigate the responsibility by issuing systematic and special legal norms. Secondly, the Standing Committee of the National People's Congress can also amend the current laws to formulate legal norms matching the file security and the connection mechanism for the efficient operation. Finally, the Supreme People's Court, the Supreme People's Procuratorate and the ministries of The State Council can standardize the specific procedures of execution connection by promulgating judicial interpretations. In addition, directly to the national archives work for overall planning, macro management of the national archives bureau from the formulation of file security execution cohesion of various rules, formulate pertinence and operability file security execution of cohesion working rules, in order to the file law enforcement, file illegal crime cases transfer and execution evidence conversion work to provide more effective guidance.

In the legislative system of adjusting the connection of execution, it is urgent to further improve the connection between the new Archives Law and the current Criminal Law. As the two core legal norms supporting the execution connection in the field of archives security, the Archives Law and the Criminal Law should strengthen the physical connection between the two. Specifically speaking, we can start from the following aspects: First, clarify the protection object of archival illegal crimes, and improve the constitutive elements of archival crimes. The current "Criminal Law" and "Archives Law" stipulated that the protection object of archives illegal crimes is different. The object of protection in Article 329 of the Criminal Law is limited to the state-owned archives, which to a large extent only protects the archives management system and the ownership of the state-owned archives, and ignores the protection of the security of the collective and individual archives. However, the Archives Law does not make any distinction between the ownership subject of archives, and the

second, seventh and sixth clauses fully indicate that all archives with protection value are worthy of protection, including state-owned archives, collective and individual files. In addition, the subjects of the 11 illegal acts stipulated in the Archives Law include "natural person and unit", while the two explicit file crimes in the Criminal Law, the subjects of the acts only stipulate "natural person". The difference between the protection object and the constituent elements of the file illegal crime greatly affects the execution connection work. Therefore, the Criminal Law should clarify the protection objects of archival crimes, extend the protection objects of archival crimes and crimes to the state-owned archives, collective and individual archives, improve the constitutive elements of archival crimes, and strengthen the physical connection of execution in the field of archival security. Second, add new charges, adjust and revise the current "criminal Law" in the provisions of archives security. For example, the crime of robbery files, intentional damage files. In order to make the "archives Law" article 48 and 50 of the 11 illegal acts in the "Criminal Law" can find the matching charges. Third, adjust the penalty configuration, add fine penalty and qualification penalty. The use of diversified punishment means can more effectively prevent the occurrence of crime. The addition of penalty can disappoint the purpose of criminals pursuing economic interests. The addition of qualification punishment can cut off the qualification of taking advantage of his position from the source.

B. We will improve the case transfer mechanism

Whether the case transfer mechanism and the evidence transformation mechanism are mature largely determines whether the execution in the field of file security can be smoothly connected. In the connection of file security execution, the case transfer mechanism can be improved from the following aspects. First, make clear the transfer standards of execution cases in the field of file security. The author believes that the transfer standards of file security crime type cases should be appropriately relaxed. In the process of archives law enforcement, archives law enforcement personnel will case to the public security organ standard should not be to achieve criminal case related standard, and should be appropriate, as long as the law enforcement personnel collected evidence to prove suspected crime, should be transferred to this type of case, the investigation by the public security organs. The author believes that in the process of law enforcement, administrative laws and regulations are the most fundamental basis for their law enforcement. If they are required to take the criminal filing standards as the basis for law enforcement, in fact, the archival law enforcement personnel are too high and their operability is not strong. Second, it is clear that the public security organs should accept cases according to law and strengthen the responsibilities of the public security organs in accepting cases. When accepting the cases suspected of archival crimes transferred by the archives department, the public security organ shall not refuse the transfer of the case on the grounds of insufficient evidence and incomplete materials. Third, refine the case transfer criteria. Comprehensive evaluation and judgment on the types, levels and social impact of archival

crime cases should be made, and specific and detailed standards for the transfer of archival crime cases should be formulated.

C. Establish an evidence transformation mechanism

As far as the evidence conversion mechanism is concerned, it is necessary to be clear that there are many differences between the evidence collected in the process of archives administrative law enforcement and the evidence in criminal proceedings, which are manifested in the different types of evidence and the proof standards. Although the existing evidence system has not been able to fundamentally eliminate the differences between the two kinds of evidence, the author believes that the differences between the two kinds of evidence can be solved from the following three aspects, and further enhance the criminal proof of the evidence in the process of archives administrative law enforcement. First of all, the "on-the-spot record" in the Interim Provisions on Archives Administrative Punishment Procedures should be interpreted as "inspection, inspection, identification and other records", in which the "statement of the parties" can be corresponding to "the confession and defense of the criminal suspect or defendant" or "the statement of the victim". In this way, the evidence provisions in the field of archival security can be relatively consistent with the existing provisions such as the Criminal Procedure Law. Secondly, the normative aspects of evidence collection and preservation in the process of archives administrative law enforcement can be compared with reference to the provisions of the Criminal Procedure Law. On the subject of evidence collection, two or more archival law enforcement personnel shall search and collect evidence strictly within the process; in the way of evidence collection, search and collect evidence through text, video recording and record inspection to form a whole-process and comprehensive law enforcement record system. Finally, further improve the criminal judicial organs to review the archives law enforcement evidence system. Once the public security organ receives the evidence transferred by the archives law enforcement organ, it is necessary to strictly examine the standardization and proving power of the evidence, combine the methods of formal review and substantive review, to exclude the illegal archives law enforcement evidence and finally enter the criminal judicial procedure.

D. We will improve the procuratorial and supervision system

The supervision effect of execution connection in the field of archives security depends on the rich supervision methods, so it is necessary to further broaden the information channels of procuratorial organs in the field of execution connection in the field of archives security. "If a government wants to operate effectively, it needs to carefully control the flow of information." It can be seen that not only government governance needs to make full use of information, but also procuratorial organs also need to make full use of information to carry out precise supervision in the process of file execution connection.

Expand the information channels of procuratorial and supervision generally online and offline: one is to build an online information sharing platform for file execution. To be specific, local archives departments at all levels should

standardize the subject qualification of archival information release on the information sharing platform, carefully examine the time and method of information release, refine the information input standards, and clearly stipulate the legal consequences and responsibilities of the input information responsibility subjects when the input information is not timely and comprehensive. In addition, through the establishment of archives law enforcement and judicial joint case handling system, we can realize the transfer and transmission of archives administrative law enforcement and criminal justice. Second, we will improve the offline information sharing mechanism. Offline information sharing mechanism can be improved by the establishment of joint meetings, liaison officers, case consultation, information notification and other systems. Improving the online and offline file information sharing mechanism can more timely bring all the cases of archival crimes into the scope of execution connection, better practice the information sharing system, and form a good demonstration effect.

The procuratorial organ is the organ that conducts legal supervision on behalf of the state. It is the legal authority of the procuratorial organ to supervise the administrative organs and the judicial organs. All criminal judicial activities and administrative law enforcement activities should be under the strict supervision of the procuratorial organs. "The lack of supervision power of the procuratorial organs and the arbitrary transfer of the suspected criminal cases are the key issues that restrict the connection mechanism of execution. "Based on this, first of all, we need to guarantee the independence of the institutional status of the procuratorial organs. When the higher procuratorial organ leads the local procuratorial organ, the local procuratorial organ should only be responsible to the higher inspection organ, so that the local procuratorial organ will dare to supervise the law enforcement behavior of the local administrative organ and further effectively exercise the right of supervision. Secondly, the Criminal Procedure Law should make it clear that the procuratorial organs have the right to transfer or file the public security organs for the file administrative law enforcement cases suspected of file crimes. The procuratorial organ shall ask the administrative organ to explain the reasons if the administrative organ does not transfer the case or the public security organ does not file the case. When the procuratorial organ thinks that the reason is not valid, it should conduct appropriate investigation, and whether to issue the "notice of transferring the case or investigating the

case" to the administrative organ or the public security organ should be decided according to the investigation results. If the administrative organ or the public security organ fails to investigate or transfer the case within the prescribed time limit after receiving the written notice, or refuses to investigate and transfer, the procuratorial organ may issue punishment opinions on the relevant personnel to the supervisory commission or the superior organ of the administrative or public security organ, and the final punishment decision shall be copied to the procuratorial organ. Finally, the supervisory organs should fully cover the objects of supervision, and the public security and judicial personnel and file law enforcement personnel who have duty crimes should be dealt with in accordance with the provisions of the Supervision Law. Those who violate the law and commit crimes shall be given administrative sanctions and investigated respectively, and shall be investigated for criminal responsibility.

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