

The path to improve the procuratorial suggestion working mechanism in the new era

Jin Hao ¹

¹ China Jiliang University, Hangzhou, China

Biography: Jin Hao, (1999.12-), male, Han nationality, Shang Rao city, Jiangxi province, Master of Laws graduate student, research direction: administrative law.

E-mail: jinhao20220222@163.com

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Abstract: As one of the means of legal supervision by procuratorial organs in the new era, procuratorial recommendations bear a considerable task. The working mechanism for procuratorial recommendations has problems such as low content quality, no attention to follow-up work, and insufficient consideration of necessity in preparing and issuing procuratorial recommendations. In this regard, the working mechanism for procuratorial recommendations should be improved from both theory and practice. At the theoretical level, the optimization of the procuratorial recommendation working mechanism can be started from three aspects: adhering to the People's Congress system, complying with the principles of legal supervision, and aiming to maintain the unity of the national legal system. At the practical level, the content of procuratorial recommendations should be optimized, a tracking mechanism for procuratorial recommendations should be established after they are issued, and the evaluation mechanism for procuratorial recommendations should be improved.

Keywords: Prosecution Suggestions; Legal Supervision; Improving the Mechanism

1. Introduction

In the new era, procuratorial suggestions are a less coercive supervision method when the procuratorial organs perform their legal supervision duties. This low coercive supervision method is in line with the current trend of the new era. However, there are still many problems in the current working mechanism of prosecutorial recommendations and need to be further improved. This article points out the important issues of the procuratorial recommendation working mechanism in the new era, and puts forward suggestions for improving it from both theoretical and practical levels, so that it can fully play its role in maintaining the unity of the legal system and promoting the modernization of the national governance system and governance capabilities.

2. Legal supervision and procuratorial suggestions in the new era

As our country enters a new era, the concept of legal supervision by procuratorial organs should keep pace with the times. As one of the most commonly used supervision methods by procuratorial organs, procuratorial recommendations also need to be improved in their working mechanism. The so-called new era legal supervision concept is based on the background that our country's procuratorial work has entered a new historical period, procuratorial reform is facing new situations and new tasks, and procuratorial organs are in a reform superposition period in which legal supervision work is comprehensively deepened and adjusted of.

Procuratorial advice is one of the means by which our country's procuratorial organs perform their legal supervision responsibilities. As the name suggests, procuratorial advice is a flexible means of legal supervision. Procuratorial recommendations are a derivative of my country's characteristic procuratorial system. In the current state power system, procuratorial organs need this procedural supervision method. One of the distinctive features of legal supervision power is that it is a procedural power without substantive power of disposal. Its characteristics also include incidentalness, contingency, randomness, etc. Precisely because procuratorial recommendations are a procedural rather than substantive means of supervision, other state powers such as administrative power and judicial power can be protected from infringement by procuratorial power to a large extent. Procuratorial recommendations first appeared in the procuratorial system of the former Soviet Union. Since the procuratorial organs of the former Soviet Union implemented "general supervision", the so-called "general supervision" means that the procuratorial organs supervise all organs, citizens and organizations of the country, almost all of them. The state supervises in all directions and without blind spots, but China does not copy the procuratorial system of the former Soviet Union. It does not implement "general supervision" but limited supervision. With the continuous development of China, the supervision method of procuratorial recommendations has also developed into various types, playing an irreplaceable role in the rule of law in the country, the government, the society, and the modernization of the national governance system and governance capabilities.

The legal basis for procuratorial recommendations is Article 21 of the Organic Law of the People's Procuratorate of the People's Republic of China , which stipulates that " the People's Procuratorate, in exercising its legal supervision powers stipulated in Article 20 of this Law, may conduct investigations and verifications, and submit protests, corrective opinions, and procuratorial suggestions in accordance with the law." "Relevant units should cooperate and promptly respond to the People's Procuratorate in writing on the adoption of corrective opinions and procuratorial suggestions." The Supreme People 's Procuratorate, based on the relevant content of the Procuratorate's Organizational Law and combined with procuratorial work practice, issued the "Procuratorial Suggestions of the People's Procuratorate" in 2009 Work Regulations (Trial)" and the formal "Work Regulations on Procuratorial Recommendations of the People's Procuratorate" were released in 2018. The "Regulations on the Work of Procuratorial Suggestions of the People's Procuratorate" clarified four types of procuratorial suggestions, namely, procuratorial suggestions for retrials, procuratorial suggestions for correcting violations, procuratorial suggestions for public interest litigation, and procuratorial suggestions for social governance. At the same time, the expansion of the types of procuratorial suggestions by the procuratorial organs was retained. With abundant legislative techniques using blanket clauses, that is, other prosecutorial suggestions. As for the four types of procuratorial recommendations that have been clarified in the "Procuratorial Suggestions Work Regulations of the People's Procuratorate", retrial procuratorial recommendations are issued to the People's Court, and their function is to supervise the trial activities of the People's Court; procuratorial recommendations to correct illegal violations are mainly issued to the public security The public interest litigation procuratorial proposal is a pre-litigation procedure in our country's public interest litigation system. Paragraph 4 of Article 25 of the Administrative Litigation Law stipulates that the procuratorial organ must first Procuratorial recommendations are issued. If the administrative agency fails to perform its corresponding duties after issuing procuratorial recommendations, public interest litigation shall be filed in accordance with the law; Procuratorial recommendations for social governance are issued to the widest range of targets, including judicial organs, administrative agencies, enterprises, and institutions. The unit aims to promote social governance and promote the modernization of the national governance system and governance capabilities.

3. Examination of the dilemma of the procuratorial suggestion working mechanism in the new era

3.1. The quality of procuratorial suggestions is not high

The low quality of procuratorial recommendations issued by procuratorial organs today is a common problem. The most prominent and common problem is the inability to prescribe the right medicine and

directly address the pain points. Article 16 of the "Procuratorial Suggestions Work Regulations of the People's Procuratorate" clearly stipulates that procuratorial suggestions should be clear and specific, fully reasoned, rigorously demonstrated, concise in language, and operational. However, in practice, there are always a small number of procuratorial suggestions that meet this provision, because most of them Procuratorial recommendations are made and issued by grassroots People's Procuratorates. The number and quality of grassroots People's Procuratorates are inferior to those of higher-level procuratorates. Therefore, most of the procuratorial recommendations are unclear, not specific, have insufficient reasoning or even ignore reasoning. The argument is simple and not operational. Some procuratorial organs may issue procuratorial recommendations for the purpose of completing work assessments, which deviates from the function and mission of procuratorial recommendations. In this way, it is impossible to issue a document that satisfies and makes the supervised agency or organization satisfied. High-quality procuratorial recommendations that satisfy the people.

3.2. Not paying attention to the follow-up work of the prosecutor's recommendations

According to the "Regulations on the Work of Procuratorial Suggestions of the People's Procuratorate", after the procuratorial recommendations are issued, the subject who has received the procuratorial recommendations shall reply within a certain period of time. If the procuratorial recommendations are not responded to within a certain period, the procuratorial organ may notify its superiors or competent authorities in accordance with the law. If the administrative agency fails to respond within the time limit, the party committee and the disciplinary inspection and supervision agency will be notified and held accountable in accordance with the law. Therefore, on the surface, as long as the person being advised responds to the prosecutorial recommendation, the mission of the prosecutorial recommendation is over. However, the function and purpose of procuratorial suggestions is not just to obtain a reply, but to maintain the unity of the country's legal system, improve the level of national governance and social governance, and help the procuratorial organs perform their legal supervision responsibilities. Prosecution recommendations will be meaningless if they only receive a reply but fail to achieve the corresponding purpose.

3.3The prosecutor's recommendation was made without fully considering its necessity

Prosecution advice is a unilateral supervision of the subject of supervision by the procuratorate. As mentioned above, it is a procedural control method and does not have the function of substantive judgment. However, it is said that with power comes responsibility. The greater the power, the greater the responsibility. On the contrary With less power comes less responsibility. The cost of issuing procuratorial recommendations is lower than other supervision methods of the procuratorial organs, so the risk of abuse and misuse of procuratorial recommendations is greater than other supervision methods. In one of the series of typical cases (sixth batch) of administrative procuratorial work with the people (sixth batch) released by the Supreme People's Procuratorate on June 16, 2022, "A Case of Procuratorial Supervision by the People's Procuratorate of a City in Zhejiang Province to Supervise a City's Engineering Construction Administrative Department to Perform Its Duties in accordance with the Law" , all grassroots procuratorates in the entire prefecture-level municipal area simultaneously formulate and issue procuratorial recommendations to the local housing and construction administrative department. In this case, a more efficient approach was for the municipal procuratorate to directly issue a procuratorial recommendation to the housing and urban construction administrative department under the people's government at the same level, and then the housing and urban construction administrative department that issued the procuratorial recommendation would submit the procuratorial recommendation. The content is communicated to its lower-level housing and construction administrative agencies, so that only one administrative agency needs to respond to the procuratorial recommendations, saving national resources.

4. Improving the theory of procuratorial suggestions in the new era

4.1. Adhere to the division of power and restriction system under the People's Congress system

The People's Congress system is our country's fundamental political system and must be upheld unwaveringly. The People's Congress is the power organ of the state. Administrative organs, procuratorial organs, judicial organs, and supervisory organs are all produced by it, are responsible to it, and are supervised by it. Under the People's Congress system, administrative agencies, procuratorial agencies, judicial agencies, and supervisory agencies exercise their respective powers independently without interference from other agencies. Procuratorial recommendations represent a power of the procuratorial organ, which should be limited by the power boundaries of the procuratorial organ and must not illegally interfere with other state agencies or erode other types of state power. More importantly, the formulation and issuance of procuratorial recommendations must also be supervised by the people, and the starting point and mission should be people-centered.

4.2. Procuratorial recommendations should comply with the principles of legal supervision

The term "legal supervision" comes from a summary of the functions of the former Soviet Union's procuratorial organs (3). After decades of development by Chinese legal scholars and practitioners, its connotation and principles have evolved with Chinese characteristics. Procuratorial recommendations are one of the means of legal supervision, and they should comply with the principles of legal supervision. The type of procuratorial advice that is most likely to cross the line and deviate from the principles of legal supervision is social governance procuratorial advice. The reason is that the content covered by social governance is too broad. my country's legal supervision is different from the "general supervision" of the former Soviet Union. Legal supervision is the basis for China to understand the supervisory functions of the Soviet procuratorial organs starting from the connotation of the Soviet Union's "procuratorial supervision" concept. On the above, we have completed the self-understanding of the connotation of the concept of "procuratorial supervision" in the Soviet Union, and combined the needs of the development of China's legal system with the sinicization of the concept (4). It is mainly the supervision of public power agencies, and the procuratorial suggestions for social governance. The targets of hair-raising also include private rights subjects. The author believes that from an institutional perspective, eliminating the power of the procuratorial organs to issue procuratorial recommendations to non-public power agencies is more conducive to the establishment and improvement of the legal supervision system. This is also more in line with the principles of legal supervision. The supervision of private rights entities may be left to Administrative agencies are more appropriate.

4.3. Maintaining the unity of the national legal system as the core pursuit

One of the important manifestations of national unification is the unification of the legal system. The unification of the legal system includes two levels, one is the unification of the legal system, and the other is the unification of the application of laws. One of the most important responsibilities of our country's procuratorial organs is to maintain the unity of the country's legal system. Specific to procuratorial recommendations, they are more often used to maintain the uniformity of legal application, because my country's constitutionality review system has not yet been perfected, and procuratorial recommendations cannot yet directly face legislative acts. Among the types of procuratorial suggestions, the retrial procuratorial suggestions are to supervise the judicial adjudication behavior of the trial agencies. The procuratorial suggestions to correct illegal violations, public interest litigation procuratorial suggestions and social governance procuratorial suggestions are mainly oriented to law enforcement behaviors. Among them, the procuratorial suggestions to correct illegal violations involve criminal justice but are due to the public security organs. In our country, it belongs to the administrative system, so its administrative law enforcement attributes are stronger, and the orientation of social governance procuratorial recommendations is not limited to law enforcement behaviors. Generally speaking, procuratorial suggestions are mainly oriented towards judicial activities and law enforcement activities. Judiciary and law enforcement are two forms of legal application, and they are subordinate concepts of legal application. Therefore, in terms of procuratorial suggestions in the current new era, if we want to expand the types of

procuratorial suggestions, we must maintain the unity of the legal system as the core pursuit. This is also one of the original missions of the state's procuratorial organs.

5. Practical Path of the Procuratorial Suggestion Working Mechanism in the New Era

5.1. Optimize the content of prosecutorial recommendations

The content of procuratorial recommendations should be based on the "Work Regulations of the People's Procuratorate on Procuratorial Recommendations" as the bottom line. On top of meeting the requirements of the "Work Regulations of the People's Procuratorate on Procuratorial Recommendations", the quality of procuratorial recommendations should be further improved and high-quality production and issuance of procuratorial recommendations should be achieved. Specifically, it should be optimized from at least the following aspects: First, strengthen the positioning of legal supervision means of procuratorial recommendations, mainly focus on legality issues, and avoid the dilemma of laymen guiding experts. When handling some highly professional cases, such as cases involving intellectual property, artificial intelligence, computer software, etc., prosecutors often do not have relevant professional knowledge and skills. The procuratorial organs need to combine their own advantages in legal expertise with the technical advantages of technicians, rather than giving random guidance in unfamiliar areas. Second, pay attention to the discussion and reasoning of the procuratorial recommendation. The procuratorial suggestion is not only to point out the problems of the subject under supervision and propose corresponding countermeasures, but more importantly, whether it can persuade the other party in terms of logic, reason, and legal principles, so that the subject under supervision can actively cooperate with the procuratorial organ to perform legal supervision duties and realize Optimal supervision effect. Third, the content of prosecutorial recommendations should be as specific as possible. As mentioned above, the vague content of procuratorial recommendations has become a common problem. In most cases, the procuratorial organs, as an external supervisory body, have a shallow understanding of the subject under supervision, so they issue a vague and interpretable Strong prosecutorial advice is favored by investigators and is the safest and least error-prone situation for them. However, such vague and unspecific prosecutorial suggestions are really unhelpful to the subjects under supervision and cannot effectively help them solve practical problems.

5.2. Establish a tracking mechanism after the procuratorial recommendations are issued

The purpose of the procuratorial recommendations is to maintain the unity of the country's legal system, promote the modernization of the national governance system and governance capabilities, etc., and to solve social problems at a smaller level. Although procuratorial recommendations are only a means for the procuratorial organs to unilaterally supervise other subjects, they are also a bridge between the procuratorial organs and society. Procuratorial recommendations cannot be dismissed immediately. As long as the problem is not resolved, even if a reply to the procuratorial recommendations is received, its functions and missions will not end. Establish a tracking mechanism after the procuratorial recommendations are issued. According to the planned time nodes, the results of the implementation of the procuratorial recommendations will be tracked and the actual situation will be recorded and summarized. What situations are likely to lead to insufficient implementation of procuratorial recommendations, how prosecutors optimize the way they handle cases, and whether their case handling concepts are reasonable and reasonable should be continuously summarized based on practical feedback, and ultimately a tracking mechanism for procuratorial recommendations after they are issued will be established and improved.

5.3. Improve the evaluation mechanism for procuratorial recommendations

In order to implement the working mechanism related to procuratorial recommendations and mobilize the enthusiasm and initiative of case handling personnel, it is necessary to improve the evaluation and fundraising of procuratorial recommendations. In practice, there is an unhealthy tendency to exclude

procuratorial suggestions from the “main business” of handling cases . The reason for this problem is that the status of procuratorial suggestions in the current evaluation mechanism is too low. Therefore, improving the status of procuratorial recommendations in the evaluation mechanism is the first step. Elevating the status of procuratorial recommendations in the evaluation mechanism to the status of the “main business” of case handling or even higher. Secondly, establish a multi-level evaluation mechanism for procuratorial suggestions. The assessment of prosecutors, chief prosecutors, and the entire procuratorial office will include the quality and effectiveness of procuratorial recommendations to ensure that procuratorial recommendations receive the necessary attention. Finally, an external assessment mechanism is introduced. Agencies that receive procuratorial suggestions can conduct differentiated evaluations on procuratorial suggestions issued by the procuratorial organs on a monthly, quarterly, or annual basis at different levels based on the actual situation. The evaluation results are fed back to the procuratorial organs and can be copied to the procuratorial organ under review. The procuratorial organ at the higher level of the agency and the political and legal committee at the same level. Similarly, the implementation of procuratorial recommendations should also be included in the annual assessments of judicial organs, administrative agencies, state-owned enterprises, and public institutions, and the supervised entities should be urged to cooperate with the procuratorial organs in performing legal supervision duties.

6. Conclusion

Procuratorial recommendations are an important means for procuratorial organs to perform their duties. Faced with the shortcomings of the current working mechanism for procuratorial recommendations, the purpose and function of procuratorial recommendations must be clarified theoretically to make procuratorial recommendations better compatible with the national governance system. In view of the pain points, difficulties, and blocking points in the working mechanism of procuratorial recommendations, we should improve the quality and effectiveness of procuratorial recommendations in practice and improve corresponding supporting measures, so that procuratorial recommendations can become a shining business card of the procuratorial organs and achieve legal and social effects. of unity.

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