THE EVOLUTION AND SURVEY OF CHINESE LEGAL SYSTEM OF PENALTIES FOR ADMINISTRATION OF PUBLIC SECURITY

Pei Zhaobin & Wang Lili***

As an important part of administrative law system, the Law on Penalties for Administration of Public Security has always caused the world's attentions. The Law on Penalties for Administration of Public Security plays an irreplaceable role in maintaining social order. However, there are still problems existing in the process of legislation and execution. For examples, the conflicts between the Law on Penalties for Administration of Public Security and the Criminal Law, the imperfection of penalty procedures, the limitation of application conditions for public security mediation. All these problems become important reasons for the imperfection of Chinese legal system of administration of public security.

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* Dean of Law School and Coast Guard School of Dalian Ocean University. Liaoning social science foundation funded project (L14BFX011). Liaoning 2015 Advisory political advice topics (2015slzz-30). Research fields: Administration Law, Constitutional and Administration Law, Criminal Law, Maritime Law, Maritime Administration Law.

** Lecturer of Law School and Coast Guard School of Dalian Ocean University. Liaoning social science foundation funded project (L14BFX011). Liaoning 2015 Advisory political advice topics (2015slzz-30). Research fields: Administration Law, Constitutional and Administration Law, Maritime Administration Law, Civil Law, Privacy Law.

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INTRODUCTION

In the history of Chinese legal system, laws on penalties for administration of public security have occupied important position all along. They play irreplaceable roles in maintaining social order, which can not be replaced by other laws. They involve many rights of administrative counterparts, like rights of personality, rights of property, rights of qualification, and rights of reputation and so on. Meanwhile, they also involve authorities and responsibilities of public security organs and people's police. Especially on August 28th, 2005 the Law of the People's Republic of China on Penalties for Administration of Public Security was enacted, which attracted the world's attention. All legal practitioners around the world including the British are all curious about the Law of People's Republic of China on Penalties for Administration of Public Security. In this

paper, the author tries to interpret the Law of the People's Republic of China on Penalties for Administration of Public Security from the aspects of its historical evolution, main contents, characteristics, the relationship between it and the security measure and its problems and deficiencies.

I. THE HISTORICAL EVOLUTION OF LEGAL SYSTEM OF PENALTIES FOR ADMINISTRATION OF PUBLIC SECURITY AFTER THE FOUNDING OF PEOPLE'S REPUBLIC OF CHINA

A. *Regulations of the People's Republic of China on Administrative Penalties for Public Security in 1957*

Eight years after the founding of People's Republic of China, Regulations of the People's Republic of China on Administrative Penalties for Public Security (hereafter referred to as the 1957 Regulations), as the first law on administrative penalties for public security, was adopted at the 81st session of the Standing Committee of the first National People's Congress of the People's Republic of China on October 22, 1957, and it was enforced at the same time. The 1957 Regulations' enactment and enforcement made our country have legal ground on administration of public security.

B. *Regulations of the People's Republic of China on Administrative Penalties for Public Security in 1986*

At the 17th session of the Standing Committee of the sixth National People's Congress of the People's Republic of China on September 5, 1986, the second law on administrative penalties for public security was adopted. It was Regulations of the People's Republic of China on Penalties for Administration of Public Security of 1986 (Hereafter referred to as the 1986 Regulations) and it was amended at the seventh session of the Standing Committee of the eighth National People's Congress of the People's Republic of China on May 5, 1994.

There were 45 articles constituting five chapters in the 86 Regulations which were general provisions, types and application of penalties, acts against the administration of public security and penalties, ruling and enforcement, supplementary provisions. As a major legal instrument of public security organs, especially the public security departments, the 1986 Regulations played a significant role in social administration. It helped to investigate and deal with all kinds of acts against the administration of public security, prevent and reduce criminal activities, maintain social order,

safeguard public security and protect citizens' lawful rights and interests. It had gradually been the core content of the system of public security administration.

However, great changes had taken place in China's political, economic and social life in recent years. With the further development of democracy and legal system, we put forward higher requirements for the level of legislative framework in the new times. The public security was confronted with more and more conditions and problems. The types of act against the administration of public security were more various and complicated. Though we revised some contents of the 1986 Regulations in 1994, the system, structure, contents of could not meet the needs in the administration of society.

Meanwhile, our country strengthened the legislative framework. The Law of the People's Republic of China on Administrative Punishments, the Law of the People's Republic of China on Administrative Reconsideration, the Law of the People's Republic of China on Administrative Procedure is adopted in succession at that time. The legislative work of Ministry of Public Security was improving and perfecting. In the field of fire protection, traffic safety, administration of identification cards, relevant authorities were making specific laws about them and some of these were finished already. The contents in these laws mentioned above were beyond the scope of the 1986 Regulations. They exerted great effects on the 1986 Regulations. As a result, conflicts of laws arose because of different provisions in those laws and the Regulations. The situations provided in the 1986 Regulations lagged far behind the reality.

II. THE IMPACTS ON LEGAL SYSTEM OF ADMINISTRATION OF PUBLIC SECURITY BROUGHT BY THE LAW ON PENALTIES FOR ADMINISTRATION OF PUBLIC SECURITY

Compared to the 1986 Regulations, the progresses of The Law on Penalties for Administration of Public Security are mainly reflected as follows:

A. *The Contents of the Law Reflects the Changes in Administration of Public Security*

1. New Types of Penalties Are Added

The Law of Penalties for Administration of Public Security reserves the types of penalties in the 1986 Regulations and adds two types of

penalties. They are revocation of licenses issued by the public security organs and the order of leaving China within a time limit or a deportation attached to a penalty exclusively applied to foreigners.

2. The Law of Penalties for Administration of Public Security Broadens the Scope of Penalties

The new law removes some acts which are beyond the scope of administration of public security (acts of destroying lawn, flowers, trees or damaging street lamps, post offices, public phones.)

In order to adapt to the new situations in social supervision, a great number of acts which are supposed to penalties appear in this law. The number of acts increases to 238 from 73.

3. The New Law Lifts the Upper Limit of Fine Including Fining on the Spot

In the 1986 Regulations persons who had the acts concerned prostitution, gambling and narcotic drugs would be fined 3000 yuan to 5000 yuan. The other acts against administration of public security would be fined 200 yuan. The Law of Penalties for Administration of Public Security reserves these provisions in order to punish persons who commit these acts. The upper limits of fines on other acts against administration of public security are decided based on the natures, circumstances of the acts and the degree of harm done to the society. In general, the limits are 200 yuan, 500 yuan and 1000 yuan. The upper limit of fining on the spot is increased from 50 yuan to 200 yuan.

The 1986 Regulations made no provisions on the upper limit of fine charging on the spot. In the Law of Administrative Punishments, the limit is 20 yuan, while in the Law of Penalties for Administration of Public Security is 50 yuan provided in the Article 104.

B. The New Law Improves the Protection of Lawful Rights and Interests of the Penalized Persons

1. The provision of respecting and safeguarding of human rights is provided in the general provisions of Chapter 1, which is regarded as a fundamental principle of the Law on Penalties for Administration of Public Security.

2. The Law of Penalties for Administration of Public Security expressly provides the maximum term when two administrative detentions

or more are executed concurrently.

In this law, where penalties of administrative detention are concurrently executed, the maximum term of such detention shall not exceed 20 days. However, there was no such provision in the 1986 Regulations.

3. The practical duration of administrative detention is more reasonable in the Law on Penalties for Administration of Public Security.

According to the approval of Ministry of Public Security, the starting time of detention was the time penalized persons first went into the detention houses. The days of restricted before the detention could not replace the day of detention.

4. The law removes the provision of principle of reconsideration in advance. When the penalized persons are not satisfied with the decision of penalties imposed on them, they can apply for administrative reconsideration, and then bring an administrative suit in the court. They also can bring an administrative suit in the court without administrative reconsideration in advance.

C. The Law Strengthens the Supervision of the Law-enforcement Authorities

1. One of the legislative aims of the law is to regularize and guarantee performance of the duties for administration of public security by the public security organs and the people's police. (Article 1)

2. This law limits the discretion of public security organs in law enforcements. The periods of administrative detention are divided into three ranks: 5 days, from 5 days to 10 days, from 10 days to 15days. The ranges of fine are also divided into there ranks: below 200 yuan, from 200 yuan to 500 yuan, from 500 yuan to 1000yuan.

In this way, arbitrariness of discretion can be lessened from the source.

D. The Procedures for Penalties Are Improved in the Law on Penalties for Administration of Public Security

1. The Law Adds a New Chapter to Provide the Procedures for Penalties

There were only 10 articles of procedures for penalties in the 1986 Regulations. While in the Law on Penalties for Administration of Public Security, the number of articles is 26. The procedures of accepting cases, collecting evidences, distraining, storing and disposing of articles related to

the case, informing and holding a hearing are expressly provided in the law.

2. The Law Improves the Transparency in the Process of Law-enforcement

The public security organs should, without delay, notify the family members of the person summoned the reasons for the summons and the place where summons held. When a decision on penalty of administrative detention is made, the family members of the person penalized should be notified without delay. Where there is a victim in a case, the public security organs should send the duplicate of the written decision to the victim.

3. Extorting a Confession by Torture Is Strictly Forbidden in the Law on Penalties for Administration of Public Security

In the Article 79, the law expressly provides that: the public security organs and the people's polices should investigate cases of public security according to law. Extorting confessions by torture or collecting evidence by such illegal means as threat, allurement or deception is strictly prohibited. And evidence collected by illegal means should not be taken as the basis of penalty.

In the Article 116, it provides that: if a people's police office extorts a confession by torture in handling cases of public security, he will be given an administrative sanction. And if his acts constitute a crime, he will be investigated for criminal responsibility according to law.

4. The Law Provides the Limit of the Period for Handling a Case

There were no provisions on periods for handling a case in the 1986 Regulations. While according to the judicial interpretation of the Supreme Court, the period was 60 days.

In the Law on Penalties for Administration of Public Security, the Article 99 provides that: the time limit for the public security organs to handle a case of public security should not exceed 30 days from the date the case is accepted, where they are major and complicated cases, the time limit may be extended for 30 days upon approval by the public security organs at the next higher level.

5. The Time of Summons Is Controlled in a Certain Range

The time when the public security organs conduct an interrogation and

investigation after the summons is shortened in the Law for Penalties of Administration of Public Security. While in the 1986 Regulations, the time could not exceed 12 hours.

In the Article 83, it provides the public security organs should conduct an interrogation and investigation which should not exceed 8 hours. If the circumstances are complicated enough to hold an administrative detention, the time of interrogation and investigation should not exceed 24 hours.

6. The Law Strengthens the Degrees of Enforcement Supervision

A new chapter of law-enforcement supervision is added to regularize people's polices' behaviors in the process of handling cases.

The basic behavioral norms, the prohibited acts and their legal liabilities are also provided in this chapter.

III. THE FEATURES OF CHINESE LEGAL SYSTEM OF PENALTIES FOR ADMINISTRATION OF PUBLIC SECURITY

From the perspective of comparative law, there are four salient features of the Chinese legal system of penalties for administration of public security.

A. *On the Organs Who Imposing Administrative Penalties, a Unified System Is Adopted*

The power of imposing administrative penalties is concentratedly wielded by public security organs. The people's courts only have the power of judicial supervision on administrative penalty and they can not issue an administrative penalty decision. According to the Law on Penalties for Administration of Public Security and other laws and regulations on administration of public security, the organs which can impose administrative penalties are state organs of public security. Any other state organs and organizations do not have the power to impose administrative penalties. As mentioned above, citizens, judicial persons and other organizations can institute administrative lawsuits against penalty decisions made by public security organs to people's courts. The people's courts will review the specific administrative acts made by public security organs, whether they overstep their legal authorities or violate legally prescribed procedures to make penalty decisions. And the people's courts will make final judgments on these specific administrative acts whether they are in line with the law or not. Then they will maintain, dismiss or conditionally change public security organs' decisions according to different situations.

The people's courts do not have the power to impose a penalty on administrative counterparts directly. They can only change the penalty decision when it is obviously unfair. So the public security organs are the unique subjects to wield the power to impose administrative penalties.

B. The Procedures for Penalties Are the Same As the Administrative Procedures

In countries or areas where the common-law system is adopted, the administrative organs have no power to impose freedom penalties or property penalties in principle. These two kinds of penalties can only be imposed by courts through judicial procedures. The administrative organs play roles in investigating, inspecting and prosecuting. In the continental-law system countries, procedures for penalties can be divided into two kinds: courts' special judicial procedures and administrative procedures. Compared with common criminal cases, cases of administrative penalties (equivalent to Chinese public security cases) are easier, and the punishments are lesser. However they are always in large amount, so the courts always adopt summary procedures to try cases instead of formal criminal proceedings to raise efficiency. Summary procedures are always provided in special laws beyond the range of criminal procedure law. Administrative procedures are always provided in administrative procedure law, special laws on administrative punishments and separate laws. They include summary procedures which mean penalized on the spot and common procedures where penalty is out the spot. Summary procedures apply to cases whose plots are easy and penalties are light. The summary procedures can be converted into common procedures when the administrative counterparts disagree with the penalties administrative organs gave on the spot. Judicialization is a fundamental feature of the common procedure. They are similar as quasi-judicial procedures which the courts adopt to try cases of administrative offenses and then make penalty decisions. Summary procedures, common procedures and hearing procedures are also provided in the Law on Penalties for Administration of Public Security and the Law on Administrative Punishments of China. Public security organs will not convert the summary procedure into the common procedure to make another penalty decision when administrative counterparts disagree with the penalty decision made by public security organs on the spot which is different from that in continental-law countries. When decision made by summary procedures comes into force, the administrative counterparts can institute an administrative reconsideration or an administrative proceeding if they

disagree with the penalty decisions. In procedures for penalties, the hearing procedure is not an essential part. While in western countries, hearing procedure is essential for administrative organs to handle administrative illegal cases. Without this session, the penalty decision can not take effect. Given all that, the procedures for penalties in China are totally the same as the administrative procedures, but the degree of procedural judicialization is not very high. This kind of penalty system has the features of low-cost and high-efficiency at the present stage.

C. On the Form of Sanctions, Chinese Administrative Penalty Is a Kind of Intermediate Sanction

In common-law countries and areas, courts impose personal punishment and property penalty and other criminal penalties on administrative counterparts to ensure their duties which the administrative law provided can be respected and fulfilled. So, in common-law countries, there are no concepts or theories on penalties for administration of public security. Acts against the administration of public security provided in the Law on Penalties for Administration of Public Security are those which put negative effects on public order, public security, personal security, and public or private property security. As a result, the severity of penalties for administration of public security is lower than criminal penalties and higher than administrative sanctions. They are kinds of serious administrative sanctions including administrative detention which means restriction of freedom of person. In the Article 54 of Chapter 3 whose contents are acts against the administration of public security and penalties, the amount of acts which can be applied to administrative detention is 53.98% of all acts provided in this session. The amount of acts which can be applied to penalty of a fine is 50.92% of all acts. Only 7 kinds of acts can be applied to penalty of warning, 13% of all acts. As a serious kind of administrative punishments, penalty for administration of public security is directly relevant to criminal penalties. In the forms of sanctions, penalties for administration of public security belong to the range of intermediate sanctions.

D. The Coerciveness of Penalties for Administration of Public Security Has a Nature of the Police Coerciveness

In common-law countries and areas, administrative organs can issue notices on penalty of a fine on persons who violate the administrative law in certain cases. However, these kinds of notices are not legally binding. If the administrative counterparts have objections, these penalties will not be put

into enforcement. At that time, the administrative organs still need to bring a suit to courts to decide the validity of penalties made by administrative organs. Then the courts will make binding judgments and put them into enforcement.

The coerciveness of penalties on administration of public security expresses in three aspects:

The subjects who can impose penalties on administration of public security are public security organs who have police power. They can put these penalties into enforcement directly without the help of judicial organs. This kind of power they have is other administrative organs do not possess. Administrative detention is a kind of penalties on administration of public security which other administrative punishment don't have. This is a symbol to embody the police coerciveness of penalties on administration of public security which means restriction of freedom of person is legal. If the administrative counterparts have no warrant reasons to refuse the penalties of fine, administrative detention made by public security organs according to law, these organs have the power to enforce these penalties directly.

IV. THE DEFECTS AND IMPROVEMENTS OF THE LAW ON PENALTIES FOR ADMINISTRATION OF PUBLIC SECURITY

A. *The Conflicts between the Law on Penalties for Administration of Public Security and the Criminal Law and Their Solutions*

1. The Conflicts between the Law on Penalties for Administration of Public Security and the Criminal Law

Influenced by various factors, the conflicts between these two laws are reflected in six articles. They can be divided into three kinds according to their conditions.

2. Solutions to Solve the Conflicts between the Law on Penalties for Administration of Public Security and the Criminal Law

In the author's opinion, enacting judicial interpretations by the supreme judicial organ is the most essential and feasible approach to solve these conflicts.

Under the leading of the Ministry of Public Security, uniting with the Supreme People's Procuratorate and the Supreme People's Court, the judicial interpretations should set clear standards for some specific crimes according to circumstances of crimes which always happen in the reality.

The judicial interpretations are explanations of some specific legal problems which are made by the supreme judicial organ in the application of law. The judicial interpretations can help to set clear demarcations between crime and non-crime which accord with their functions. And this method is prompter, director and clearer than the legislation which is easy to handle. In fact, the Supreme People's Procuratorate and the Ministry of Public Security jointly enacted the Regulations on Prosecution Standards of Economic Crimes in order to set clear demarcations between crime and non-crime of economic cases and unite the prosecution standards. In addition, the author has the following opinions for reference.

B. The Defects and Improvements of Procedures of Penalties for Administration of Public Security

1. The Defects of the Procedures of Penalties for Administration of Public Security

The procedures of penalties for administration of public security have always been in a leading position in Chinese administrative procedural legislation.

Due to the defects of written laws and the rapid changes in reality, the legislation of penalty procedures is facing some new problems and challenges though it improves the protections of personal rights and the efficiency of public security organs at the same time. Therefore, the significance to study the penalty procedures is to make a scientific assessment of these procedures effectively. No matter in the Administrative Law, the Regulations on Procedures for Public Security Organ to Handle Administrative Cases or the Law on Penalties for Administration of Public Security, there are some deficiencies and loopholes. And in the practice of enforcement, problems exist as well.

2. The Improvements of the Procedures for Penalties for Administration of Public Security

The basic way to solve the problems existing in the legislation and practice is to improve the legislation work of procedures for penalties in the administration of public security. Meanwhile, the development of the legislation of procedures for penalties should be based on the reality in our country. We should carry it out in stages which are consisted with China's national conditions.

CONCLUSION

As an important part of Chinese legal system, the system of penalties for administration of public security possesses the obvious Chinese features which can be reflected in the evolution and survey of it. In general, the system begins to pay more attention on the balance between social order and the personal lawful rights. Though restricted by multiple factors, there is still much space to improve the legislation of this system.