

THE PRACTICE AND IMPROVEMENT PATH OF CHINA'S REVERSE COORDINATION SYSTEM BETWEEN ADMINISTRATIVE ENFORCEMENT AND CRIMINAL JUSTICE

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Yu Rui^{*}

At the Third Plenary Session of the 20th Central Committee of the Communist Party of China, the key reform task that 'improvements will be made to the system for coordinating administrative and criminal penalties' was designated, drawing significant attention from academics and practitioners to China's reverse coordination mechanism between administrative enforcement and criminal justice. By examining the developmental trajectory and practical status of this system, it becomes evident that this unique reform initiative of the rule of law with Chinese characteristics, while showcasing its institutional advantages, also presents areas in urgent need of improvement, such as unclear theoretical foundations, incomplete frameworks, and limited operational effectiveness. Advancing the rule of law for the reverse coordination system between administrative enforcement and criminal justice requires a clear delineation of roles between procuratorial and administrative agencies, grounded in respecting the administrative agency's initial judgment authority. The reform should follow an orderly approach, embracing the model of 'front-end collaboration and back-end supervision' and adhering to 'always establishing new systems before abolishing old ones while attaching equal importance to efforts in both respects'. By specifically addressing the prominent issues in the practice of reverse coordination, the ultimate goal is to achieve lawful and efficient bidirectional coordination between administrative penalties and criminal penalties, as well as seamless coordination between administrative enforcement and criminal justice.

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I. INTRODUCTION

The coordination between administrative enforcement and criminal justice, also referred to as the ‘two-law coordination’, is an abbreviation for China’s collaborative system linking administrative enforcement with criminal judicial processes. Specifically, when administrative agencies transfer suspected criminal cases discovered during their enforcement actions to judicial authorities for handling, this constitutes positive coordination between administrative enforcement and criminal justice. Conversely, when judicial authorities transfer cases that, under the law, do not warrant criminal responsibility or are exempt from criminal penalties but may still involve administrative violations to administrative agencies for processing, this constitutes reverse coordination between administrative enforcement and criminal justice. Although China established the basic rules for reverse coordination as early as 1996 in the *Criminal Procedure Law*, setting provisions for procuratorial organs to transfer cases to administrative agencies, nearly 30 years of development have seen the positive coordination system continuously strengthened and gradually formalized under the guiding principle of ‘criminal priority’. In contrast, the enhancement and advancement of the reverse coordination mechanism have progressed relatively sluggishly. Coordination between administrative enforcement and criminal justice has predominantly focused on positive coordination to prevent the misuse of administrative penalties as substitutes for criminal penalties. This trend has, to some extent, diminished the significant value of the reverse coordination system in preventing the phenomenon of ‘neither criminal sentences nor administrative penalties’. In response, at the Third Plenary Session of the 20th Central Committee of the Communist Party of China, a major reform task that ‘improvements will be made to the system for coordinating administrative and criminal penalties’ was designated for comprehensively deepening reform and advancing the rule of law in administrative governance. This underscores China’s important reform direction to improve the reverse coordination mechanism with an attitude of ‘equally valuing bidirectional coordination’. Consequently, how to refine and standardize the reverse coordination system within the framework of the rule of law, thereby establishing a genuinely ‘bidirectional mechanism’ with

positive coordination, has become a crucial issue that both theoretical and practical fields must jointly address.

Discussions on the coordination system between administrative enforcement and criminal justice have a long history in the fields of administrative law and criminal law in China. Although earlier discussions primarily focused on ‘positive coordination between administrative enforcement and criminal justice’, some scholars have articulated the underlying logic and developmental direction of the coordination system. They suggest that by constructing an administrative-criminal law framework to manage the intersecting and overlapping relationships between administrative procedures and criminal litigation processes, the two can achieve organic coordination and connection.¹ In recent years, with the accelerated promotion of reverse coordination efforts, scholars have also explored the comprehensive scope of the reverse coordination system from various perspectives. These include departmental administrative law in areas such as food safety, drug safety, and environmental protection, as well as aspects like evidence transfer rules and procuratorial supervision mechanisms.² Such explorations have significantly contributed to continuously enriching and refining the theoretical foundation of this system. Distinct from previous discussion models that separated different perspectives, this paper endeavors to approach the topic from the vantage point of the rule-of-law trajectory of reverse coordination between administrative enforcement and criminal justice. On one hand, it aims to examine the institutional evolution and legal practices of this mechanism to identify current institutional bottlenecks and core theoretical challenges in reverse coordination work. On the other hand, it seeks to uncover the institutional framework and directions for future reforms to strengthen and improve this system.

1 See LIU YANHONG & ZHOU YOUYONG, THEORIES ON THE ADMINISTRATIVE CRIMINAL LAW, at 13-17 (Peking University Press, 2008).

2 See Zhou Youyong, *Administrative and Criminal Coherence Through the Lens of Transferring the Food Safety Cases*, 4 Criminal Science 47 (2022); Song Hualin, *The Reverse Connection Mechanism Between Pharmaceutical Administrative Enforcement and Criminal Justice*, 2 Journal of National Prosecutors College 39 (2024); Liu Yi, *The Role and Responsibility of the Procuratorate in the Supervision Mechanism of the Reverse Connection of Administrative Enforcement and Criminal Justice*, 2 Journal of National Prosecutors College 18 (2024).

II. THE DEVELOPMENTAL TRAJECTORY AND PRACTICE REVIEW OF CHINA'S REVERSE COORDINATION SYSTEM BETWEEN ADMINISTRATIVE ENFORCEMENT AND CRIMINAL JUSTICE

A. The Developmental Trajectory of China's Reverse Coordination System Between Administrative Enforcement and Criminal Justice

China's reverse coordination system has been developed with a focus on procuratorial organs exercising supervisory authority over administrative agencies. In order to gain a deep understanding of the internal mechanisms that have shaped this model, it is necessary to trace back to the inception of China's reverse coordination system between administrative enforcement and criminal justice to observe its evolutionary process. Overall, the origin and developmental trajectory of China's reverse coordination system between administrative enforcement and criminal justice can be divided into four stages.

1. *Separation Stage from 1978 to 1996.* — Following the reform and opening up in 1978, China was in the arduous process of rebuilding its socialist legal system. In this period, article 32 of the *Criminal Law* enacted in 1979 stipulated that the people's court 'may' transfer cases exempt from criminal punishment to the 'competent department for administrative penalty'.³ Although this provision is generally regarded as the origin and prototype of the reverse coordination system between administrative enforcement and criminal justice, it did not functionally establish such a system because it was not a mandatory (responsibility-based) clause but rather fell within the domain of judicial discretion. Moreover, the *Criminal Procedure Law* enacted in the same year did not establish corresponding transfer coordination mechanisms,⁴ which did not generate the institutional function of such reverse coordination. A similar situation existed in the administrative management legislation of that time. Although these laws

³ *Criminal Law of 1979*, article 32.

⁴ It should be noted that the *Criminal Procedure Law of 1979* provides only in article 102 that the people's procuratorate 'shall deliver the decision in writing to exempt from prosecution to the public security organ', and establishes the system for the latter to initiate reconsideration and review. This system still falls within the scope of criminal justice and serves as a judicial check on the public security organs' handling of case outcomes, rather than a reverse coordination mechanism between administrative enforcement and criminal justice.

included provisions such as ‘where a crime is constituted, the case shall be transferred to the judicial authority’, the administrative agencies retained strong independent authority to classify and adjudicate cases involving criminal matters and lacked supervisory constraints. Consequently, during this stage, administrative enforcement and criminal justice in China remained fundamentally separated, with administrative and judicial agencies fulfilling their respective duties independently.

2. *Criminal Priority Stage from 1996 to 2012.* — The prosecution exemption system stipulated in the 1979 *Criminal Procedure Law* encountered issues of overapplication in practice, particularly in cases of occupational crimes and tax crimes, where the rate of applying prosecution exemption was relatively high, increasing the risk of corruption.⁵ Consequently, the *Criminal Procedure Law* amended in 1996 abolished this system and established a more scientific non-prosecution system. The transition from the prosecution exemption system to the non-prosecution system provided a new opportunity for the development of the coordination system between administrative enforcement and criminal justice, especially for the reverse coordination system. To compensate for the potential legal responsibility gaps caused by non-prosecuted cases, article 142 of the revised *Criminal Procedure Law* for the first time stipulated the procedures and feedback mechanisms for procuratorial organs to transfer cases to administrative agencies.⁶ Thus, the first relatively complete institutional regulation of China's reverse coordination system between administrative enforcement and criminal justice was established and has been maintained to date.

From an administrative law perspective, the *Law on Administrative Penalty* enacted in the same year addressed the issue of ‘cases not being transferred and administrative penalties replacing criminal sanctions’ by reinforcing the positive coordination mechanism with provisions mandating the strict transfer of cases by administrative agencies.⁷ Additionally, article 1 of the *Regulations on the Transfer of Suspected Criminal Cases by*

5 See Pan Zhongren, *On the System of Exemption from Prosecution of the People's Procuratorate*, 1 Contemporary Law Review 64 (1990).

6 *Criminal Procedure Law* (revised in 1996), article 142, paragraph 3.

7 *Law of the People's Republic of China on Administrative Penalty*, article 22.

Administrative Law Enforcement Organs issued by the State Council in 2001 explicitly stated that the primary legislative purpose of this administrative regulation was to ‘ensure that administrative enforcement agencies timely transfer suspected criminal cases to public security agencies’. It required administrative agencies to transfer cases to public security agencies uniformly when the consequences of unlawful behavior met criminal standards. In cases where administrative agencies and public security agencies could not agree on whether a case constituted a crime, procuratorial organs would exercise legal supervisory functions to ensure the prioritization of the judiciary in combating crimes.

Therefore, the evolution of China’s coordination system between administrative enforcement and criminal justice during this stage is characterized by several key developments. Firstly, the establishment of the ‘criminal priority’ principle underscored the importance of prioritizing criminal justice within the coordination framework.⁸ Secondly, there was an intensive issuance of normative documents on ‘two-law coordination’, primarily aimed at addressing the issues between administrative law enforcement agencies failing to transfer cases and poor positive connection between administrative enforcement and criminal justice.⁹ The specific improvement and advancement of the reverse coordination mechanism appeared relatively lagging, as related provisions remained weakly embedded in legislation and normative documents, and insufficient attention was given to this aspect of the work.¹⁰ Lastly, the establishment of a supervisory model centered on procuratorial organs played a pivotal role in driving the coordination between administrative enforcement and criminal justice, ensuring that prosecutorial supervision effectively facilitated the integration

8 The principle of criminal priority, also known as the principle of criminal case first, refers to the requirement that administrative law enforcement agencies should timely and proactively transfer suspected criminal cases to competent criminal justice authorities during the process of handling administrative violations. See Zhou Youyong, *supra* note 2, 55.

9 In 2001, the State Council issued the *Regulations on the Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs*; in 2006, the Supreme People’s Procuratorate, the Office of the National Leading Group for Rectifying and Standardizing the Market Economic Order and the Ministry of Public Security et al. issued the *Opinions on Timely Transfer of Suspected Criminal Cases in Administrative Law Enforcement*; in 2011, General Office of the CPC Central Committee and the State Council issued the *Opinions on Strengthening the Coordination Between Administrative Law Enforcement and Criminal Justice*.

10 See Zhang Hong, *The Two-Way Connection Between Administrative Penalty and Criminal Penalty*, 5 China Law Review 27, 27 (2020).

of administrative and criminal processes.

3. *Gradual Improvement Stage from 2012 to 2021.* — After the 18th National Congress of the Communist Party of China, the Party Central Committee, with Comrade *Xi Jinping* at its core, placed high importance on improving the coordination mechanism between administrative enforcement and criminal justice, repeatedly issuing clear directives. In November 2013, the Third Plenary Session of the 18th Central Committee of the Communist Party of China passed the *Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Deepening Reform*, which designated ‘two-law coordination’ as one of the major tasks for comprehensively deepening reform. In October 2014, the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China passed the *Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning Comprehensively Advancing Law-Based Governance*, which also proposed ‘to improve the coordination mechanism between administrative enforcement and criminal justice and achieve seamless integration of administrative penalties and criminal penalties’. Concurrently, the specific institutional regulations for reverse coordination between administrative enforcement and criminal justice gradually transitioned from administrative regulations and rules to standalone legislative provisions, as evidenced by the emergence of reverse coordination clauses in laws such as the *Food Safety Law*¹¹ and the *Drug Administration Law*.¹² Since the 18th National Congress of the Communist Party of China, China’s coordination work between administrative enforcement and criminal justice has entered a new era. Although positive coordination remains the focus of coordination work during this stage, the institutional and mechanism reforms of reverse coordination between administrative enforcement and criminal justice have gradually accelerated into the fast lane of legislative practice.

4. *Rapid Development Stage from 2021 to the Present.* — In June 2021, the *Opinions of the Central Committee of the Communist Party of China on Strengthening the Legal Supervision Work of Procuratorial Organs in the*

11 *Food Safety Law* (revised in 2015), article 121, paragraph 2.

12 *Drug Administration Law* (revised in 2019), article 113, paragraph 2.

New Era issued explicit requirements for reverse coordination, emphasizing the need to ‘improve the system in which procuratorial organs transfer criminal suspects who have been decided not to prosecute to the relevant competent authority for administrative penalties, administrative sanctions, or other sanctions in accordance with the law’. In August of the same year, the Supreme People’s Procuratorate issued the *Provisions on Promoting the Coordination Between Administrative Law Enforcement and Criminal Justice*, which clarified the specific working model for the procuratorial organ to transfer case evidence and other relevant materials to the same-level competent administrative agency through procuratorial opinions and non-prosecution decision documents. In August 2021, the Central Committee of the Communist Party of China and the State Council issued the *Implementation Outline for the Construction of a Law-Based Government (2021-2025)*, which proposed to ‘improve the coordination mechanism between administrative enforcement and criminal justice, strengthen the construction of information platforms for two-law coordination, and promote the mechanization of information sharing, standardization of case transfer criteria, and procedural standardization’. The newly revised *Law on Administrative Penalty of 2021*, at the level of basic administrative law, for the first time stipulated the reverse coordination of transferring cases from judicial authorities to relevant administrative agencies.¹³ It also provided ample space for establishing guiding norms for case transfers among the processes of clue collection by administrative agencies, investigation conduction by public security agencies, prosecution review by procuratorial organs, and judgment and ruling delivery by adjudicatory bodies.

Subsequently, departmental administrative laws formulated or amended after this period progressively incorporated reverse coordination clauses modeled after this expression.¹⁴ With the Third Plenary Session of the 20th Central Committee of the Communist Party of China designating the ‘improvement of the bidirectional coordination system between administrative penalties and criminal penalties’ as a major reform task for

13 *Law of the People’s Republic of China on Administrative Penalty* (revised in 2021), article 27.

14 See *Wildlife Protection Law* (revised in 2022), article 35, paragraph 5; *Law of the People’s Republic of China on Quality and Safety of Agricultural Products* (revised in 2022), article 61, paragraph 2.

comprehensively deepening reform and advancing law-based government administration, the reverse coordination system between administrative enforcement and criminal justice ultimately received equal emphasis to positive coordination in the central top-level reform design. Consequently, it has entered a stage of rapid development at the legislative, policy, and legal implementation levels.

By closely examining the evolution of China's reverse coordination system between administrative enforcement and criminal justice over the past four decades, it is evident that this system has evolved from the initial separation of administrative and criminal procedures to the prominence of the criminal priority principle in positive coordination, followed by the gradual exploration within departmental administrative laws, and finally entered a stage of rapid development. This evolution is characterized by a transition from nothing to something, from weakening to strengthening, and from institutional exploration to legal practice. On one hand, the development of reverse coordination between administrative enforcement and criminal justice reflects China's gradual conceptual shift from 'disposal-oriented justice' to 'governance-oriented justice',¹⁵ a process in which judicial power and administrative power have progressively intensified their interaction and collaboration, reflecting an ongoing trend that now appears irreversible. On the other hand, under the steady influence of the principle of criminal priority, the procuratorial organs have gradually assumed a principal role in driving forward both the institutional construction and the practical implementation of reverse coordination. Given that administrative enforcement and criminal justice constitute crucial pillars of the rule of law, each with its own emphasis yet closely interconnected in practice, a pressing question arises regarding how to balance these two forms of state authority in a manner that achieves a scientifically rational distribution of power and an appropriate system of checks and balances. The answer to this question becomes the linchpin for refining and improving the reverse coordination system.

15 See Huang Wenyi, *On the Modernization of Chinese-Style Judiciary*, 1 China Journal of Applied Jurisprudence 8, 13 (2024).

B. Practice and Experience of China's Reverse Coordination System Between Administrative Enforcement and Criminal Justice

With the deepening of comprehensively advancing law-based governance, the reverse coordination work between administrative enforcement and criminal justice, led by prosecutorial organs, has entered a fast development track. According to publicly available data from the Supreme People's Procuratorate in 2024, since 2023, prosecutorial organs at all levels nationwide have submitted prosecutorial opinions recommending administrative penalties for 227,000 individuals not prosecuted. Among these, out of 159,000 administrative prosecutorial supervision cases handled from January to September 2024, 95,000 cases involved the reverse coordination system between administrative enforcement and criminal justice.¹⁶ This shows that, against the backdrop of a year-on-year rapid increase in the number of administrative prosecutorial supervision cases, nearly 60% of the cases involve the reverse coordination system, and this trend is growing annually. This indicates that reverse coordination has undeniably become an important component of prosecutorial work and will remain the primary method for prosecutorial organs to fully exercise their legal supervisory functions for the foreseeable future.

Meanwhile, against the backdrop of the *Criminal Procedure Law*, the *Law on Administrative Penalty*, and other laws providing directional and foundational provisions on reverse coordination, local prosecutorial organs have created various reverse coordination work models tailored to their own practical circumstances. In prosecutorial work practices facing the new era and new conditions, the entire reverse coordination process exhibits different grassroots practice models. During the case review stage, there are different review models and standards, such as comprehensive review versus partial review, and individual review versus joint review. During the post-transfer supervisory phase, there exist administrative law enforcement supervision models in which prosecutorial organs provide follow-up supervisory opinions and copy them to judicial administrative agencies for coordination, litigation

16 See *Report of the Supreme People's Procuratorate on the Administrative Prosecutorial Work of the People's Procuratorate* (presented at the 12th Meeting of the Standing Committee of the 14th National People's Congress in 2024).

risk supervision models that rely on prosecutorial suggestions as mandatory guarantees, result feedback supervision models where prosecutorial opinions require administrative agencies to provide timely feedback, and pre-coordination supervision models where administrative enforcement agencies and prosecutorial organs first engage in unified consultation and communication before proceeding with coordination. These experiences of locally adapted grassroots practice have provided effective assistance for the advancement and improvement of China's reverse coordination system between administrative enforcement and criminal justice.

It is evident that under the leadership of the Party Central Committee, China's reverse coordination system between administrative enforcement and criminal justice is developing rapidly with remarkable momentum, and has also developed distinctly Chinese institutional advantages and practical experiences.

Firstly, the continuous advancement of China's reverse coordination system between administrative enforcement and criminal justice reflects the organic interaction between administrative power and judicial power. Unlike the mutual supervision and checks and balances emphasized in the theory of separation of powers, the development of reverse coordination represents an organic interaction between prosecutorial and administrative agencies in response to the new conditions and requirements of advancing a comprehensive framework for law-based governance and the rule of law in China. From the perspective of establishing a rigorous legal implementation system and advancing the values and institutional functions of building a law-based country and government, there is a commonality and complementarity between administrative and judicial powers.

Secondly, the rapid development of reverse coordination is a significant indicator of China's efforts to modernize its system and capacity for social governance. Under the new requirements for advancing the modernization of the system and capacity for social governance, the construction of a prosecutorial supervision mechanism within the reverse coordination system between administrative enforcement and criminal justice holds significant social importance. Reverse coordination represents the prosecutorial organs' participation in grassroots social governance and the maximization of judicial effectiveness. As the proportion of serious violent crimes continues

to decline and the proportion of minor offenses significantly increases, the trend of avoiding both excessively harsh penalties for serious crimes and lenient or absent penalties for minor offenses poses considerable pressure on social governance. The reverse coordination system between administrative enforcement and criminal justice is gradually taking on the critical responsibility of social governance.

Thirdly, strengthening reverse coordination is an important legal project to adapt to the trends in the development of China's criminal justice system. In the context of changing crime structures, the surge in minor offenses, and the increase in non-prosecuted cases, improving the prosecutorial supervision mechanism within the reverse coordination system between administrative enforcement and criminal justice holds significant legal importance. With the rising number of reverse coordination cases and the widespread application of 'relative non-prosecution', only by enhancing the handling and regulation of reverse coordination cases can both the prevention of substituting administrative penalties for criminal sentences and the prevention of neither criminal sentences nor administrative penalties be achieved. Under the premise that administrative-criminal law is not yet fully developed in China, reverse coordination serves as a unique mechanism with Chinese characteristics for mitigating minor offenses, undoubtedly becoming a crucial legal safeguard in line with China's trend towards cautious punishment in criminal justice.

C. Examination of Current Issues in the Reverse Coordination System Between Administrative Enforcement and Criminal Justice

Undeniably, the construction of China's reverse coordination system between administrative enforcement and criminal justice remains in the exploratory phase and resides within the more complex areas of reform. Therefore, it is imperative to scrutinize China's existing top-level designs and community practices to identify the deficiencies and shortcomings in the current system. The current issues in China's reverse coordination system between administrative enforcement and criminal justice primarily encompass the following three aspects.

1. Ambiguous Functional Configuration in Reverse Coordination. —

The functional configuration within the reverse coordination system between administrative enforcement and criminal justice remains vague, situated at the crossroads of administrative and judicial powers. As two principal entities in the exercise of public authority, administrative agencies, and prosecutorial organs each possess defined boundaries of power. Clarifying the limits of their public authority and distinguishing their respective responsibilities towards the public interest within the coordination framework is crucial for ensuring the smooth operation of power. An excessive separation between administrative and prosecutorial powers can lead to a 'legal vacuum', such as cases where neither criminal nor administrative penalties have been imposed through reverse coordination. Conversely, an overly tight integration of administrative and prosecutorial powers may result in the conflation of penalties, such as substituting criminal sentences with administrative fines or imposing disproportionate penalties, for instance, when accomplices receive more severe administrative penalties than principal offenders in reverse coordination cases. Therefore, it is particularly important to define the functional positioning, institutional attributes, and functional configuration of the reverse coordination system between administrative enforcement and criminal justice. This determination dictates whether the system is based on the exercise of certain power and how it is positioned, as well as whether prosecutorial organs primarily exercise their supervisory authority unilaterally or need to respect the administrative agencies' discretionary space. In practice, using prosecutorial opinions as indicators for the transfer of authority in reverse coordination, the positioning, nature, content, and procedural settings for delivering these opinions fundamentally determine the functional positioning and institutional attributes of reverse coordination. Currently, it is challenging to directly derive these aspects solely from existing reverse coordination models, necessitating further analysis and discussion.

2. *The Legal System Still Requires Enhancement.* — Compared to the *Criminal Procedure Law*, the *Law on Administrative Penalty* provides more comprehensive and neutral provisions regarding reverse coordination. However, the inherent complexity of the specialized fields of administrative law enforcement and criminal justice inevitably hinders prosecutorial intervention into administrative authority. For example, in reverse

coordination cases where the administrative penalty for a non-prosecuted individual's unlawful behavior is limited to administrative detention, there is inconsistency in practice regarding whether cases exceeding the administrative detention period should still be transferred to public security agencies for administrative penalty decisions. Additionally, the current application of responsibilities within the reverse coordination system between administrative enforcement and criminal justice remains unclear, encompassing issues such as responsibility application models (whether criminal or administrative responsibility takes precedence), responsibility coordination procedures (whether administrative penalty procedures should terminate or suspend after cases are transferred to judicial authorities), and responsibility gaps (the lack of legal provisions for non-criminal penalties following non-prosecution of certain offenses). These issues highlight the absence of standardized judgment criteria between top-level legal provisions and community judicial practices, necessitating extensive judicial interpretations, administrative regulations, and departmental rules to regulate and clarify these matters. After all, 'the requirement for clarity in regulations is a demand for the substantive legitimacy of state power'.¹⁷

3. *Practical Operational Bottlenecks.* — In legal practice, the work mechanism of the reverse coordination system between administrative enforcement and criminal justice continues to encounter operational bottlenecks. On one hand, there remain blind spots regarding the transfer targets in reverse coordination, such as situations where multiple administrative departments share regulatory responsibilities for the same unlawful behavior, regulatory gaps exist, or regional joint regulation is implemented, making it difficult for prosecutorial organs to identify the corresponding administrative agencies for reverse coordination. Additionally, there are instances where same-level administrative agencies lack jurisdiction over certain cases. On the other hand, obstacles exist in the conversion of evidence for reverse coordination, such as the long-standing unresolved issue of whether criminal evidence in reverse coordination cases can be directly converted into administrative evidence. These problems are reflected in judicial practice that requires principled regulatory clarification.

17 See Li Huizong, *The Limits of Legislation — The Principle of Legal Clarity*, 70 Yuedan Law Classroom 20, 20 (2008).

Practical operations need to be gradually improved under the guidance and supplementation of overarching principles.

III. ANALYSIS AND OPTIMIZATION OF THE RELATIONSHIP BETWEEN PROSECUTORIAL POWER AND ADMINISTRATIVE POWER IN REVERSE COORDINATION BETWEEN ADMINISTRATIVE ENFORCEMENT AND CRIMINAL JUSTICE

In December 2024, the Supreme People's Procuratorate issued the *Opinions on Comprehensively Deepening Prosecutorial Reform and Further Strengthening Prosecutorial Work in the New Era*.¹⁸ Within the section dedicated to enhancing the impartial judicial system and mechanism of prosecutorial organs, the document identified 'standardizing the handling of cases transferred by prosecutorial organs to administrative agencies' as a crucial element in advancing the bidirectional coordination mechanism between administrative enforcement and criminal justice. However, this task was not incorporated into the framework for strengthening the legal supervision mechanism. This alteration in phrasing may signify that there exist institutional and mechanistic challenges within the reverse coordination system that necessitate precise adjustments. After all, the reverse coordination system between administrative enforcement and criminal justice directly involves two types of state public powers: administrative power and prosecutorial power. Many of the current obstacles in the operation of the existing system stem from an unclear division of responsibilities and undefined boundaries between administrative and prosecutorial authorities. In practice, the specific exercise of administrative and prosecutorial powers within reverse coordination does not occur in a disordered manner; theoretically, it should embody a scenario of mutual cooperation with clearly delineated boundaries.

A. Division of Procedural Powers Between Prosecutorial and Administrative Agencies

Currently, both the *Criminal Procedure Law* and the *Law on Administrative Penalty* contain provisions related to the transfer system.

¹⁸ See *Opinions on Comprehensively Deepening Prosecutorial Reform and Further Strengthening Prosecutorial Work in the New Era* (issued by the Supreme People's Procuratorate on December 4, 2024).

Article 177 of the *Criminal Procedure Law* stipulates that the people's procuratorate shall put forward its opinions and transfer the case to the competent authority for handling. Similarly, article 27 of the *Law on Administrative Penalty* mandates that judicial authorities shall transfer the case to the relevant administrative authority in a timely manner. Although the specific wording and regulatory content of the 'transfer' clauses in these two laws differ, both adopt a mandatory ('shall') duty-based framework, institutionalizing 'transfer' as a statutory obligation that prosecutorial organs must fulfill under certain conditions. This poses the question: Should 'transfer' be considered an integral part of the prosecutorial organs' legal supervisory responsibilities, thereby endowing 'transfer' with intrinsic legal supervisory attributes?

Initially, from the perspective of the specific stage and actual role that the transfer system plays within the reverse coordination mechanism, it is inappropriate to equate 'transfer' with a part of legal supervision. Reverse coordination involves the process by which criminal justice authorities transfer punishment cases to 'competent' administrative law enforcement agencies. The recipients of such transfers must be administrative agencies with jurisdiction (at least those deemed to have jurisdiction by prosecutorial organs). This indicates that the institutional significance of 'transfer' encompasses not only the relocation of cases from the criminal judicial process to the administrative enforcement process but also the preliminary determination of specific jurisdictional issues as the case enters the administrative enforcement process. In both administrative enforcement and criminal judicial procedures, jurisdiction determination is a prerequisite for substantive judgment. The establishment of an authority's jurisdiction over a specific case requires the facilitation of 'transfer' as a link. In summary, within the complete operational workflow of the reverse coordination mechanism, 'transfer' occurs at the stage before the specific administrative law enforcement agency conducts substantive judgment on an individual case. Its specific role is to assist in shifting jurisdiction from criminal justice authorities to administrative law enforcement agencies. Therefore, the essence of 'transfer' lies in its function as a necessary procedural arrangement for cases to ultimately enter the administrative enforcement jurisdiction or even the specific jurisdiction of a particular administrative enforcement

entity. In the practice of reverse coordination, although 'transfer' is initiated by prosecutorial organs, the process itself does not involve the execution of administrative enforcement activities. Whether administrative law enforcement agencies file cases in a timely manner, respond to prosecutorial opinions, or provide their own opinions occurs after the transfer has been completed. At this point, prosecutorial organs must, based on their statutory duties, consider whether to undertake specific legal supervisory work under the legality of the administrative agencies' actions. It is evident that 'transfer' does not directly involve the legal supervisory obligations of prosecutorial organs. Prosecutorial organs have no necessity to extend their supervisory functions to the transfer stage, and theoretically, it is inappropriate to generalize the connotations and extensions of legal supervision.

Subsequently, regarding the objects of 'transfer', it is also inappropriate to equate 'transfer' with a part of legal supervision. The *Provisions of the Supreme People's Procuratorate on Promoting the Coordination Between Administrative Law Enforcement and Criminal Justice* state that 'the people's procuratorate shall transfer property related to cases which is sealed, seized, or frozen', and 'the people's procuratorate may transfer the relevant evidence materials collected during the case-handling process'.¹⁹ When prosecutorial organs transfer cases to administrative law enforcement agencies, the objects of transfer include not only documents related to the basic facts of the case but also evidence, other relevant materials and property already held by prosecutorial organs during the criminal judicial process. These materials do not embody any supervisory attribute, and are solely intended to assist administrative law enforcement agencies in understanding the case details, without imposing mandatory obligations. In contrast, during the legal supervision process, various materials delivered by prosecutorial organs to supervised entities, such as case filing notices and protest documents, often contain mandatory obligations. Therefore, from the perspective of transfer objects, there remains a clear distinction between 'transfer' and legal supervision; 'transfer' itself does not constitute a form of legal supervision.

Ultimately, according to the fundamental logic in public law of

19 See *Provisions of the Supreme People's Procuratorate on Promoting the Coordination Between Administrative Law Enforcement and Criminal Justice* (effective in 2021), article 8.

clarifying and achieving consistency between authority and responsibility through jurisdictional systems, it is also inappropriate to interpret ‘transfer’ as a manifestation of legal supervision. Jurisdiction establishes authority, and authority extends to responsibilities. Thus, responsibilities should correspond to authority. When ‘transfer’ occurs, the functional attributes of administrative agencies should be viewed as their authority to ‘jurisdiction over transferred cases’, while prosecutorial organs are fulfilling their duty to transfer jurisdiction over cases that do not fall within their own jurisdiction. This establishes a consistency between the authority of administrative agencies and the responsibilities of judicial agencies. In contrast, the positive coordination between administrative enforcement and criminal justice, due to the legislative establishment of the ‘criminal priority jurisdiction’ principle, requires administrative agencies to transfer cases to public security agencies with criminal jurisdiction. This does not generate supervisory authority for administrative agencies over the handling of criminal cases by public security agencies. Even if public security agencies should file a case but fail to do so, administrative agencies can only urge them to act through prosecutorial organs exercising judicial supervisory authority.

In conclusion, in the initial phase of activating reverse coordination between administrative enforcement and criminal justice, the procuratorate’s chief responsibility lies in proactively and promptly fulfilling its ‘transfer’ duty to accomplish the handover of jurisdiction. The administrative agency, to which the case is transferred, in turn, must swiftly perform its case-filing obligation, thereby indicating its effective acceptance of a case falling under its purview. If one regards ‘transfer’ as a form of legal supervision, such an interpretation would lack grounding in the organizational law and would also diverge from the logic of power allocation. Moreover, at this juncture, because the administrative agency has not yet reached any substantive conclusion, the procuratorate can address only the agency’s obligation to file a case. In other words, in the event that the administrative agency should but fails to file a case, the procuratorate, through communication and coordination with the administrative agency, may decide whether to adopt further measures of procuratorial supervision to ensure the completion of the case-filing procedure. Even so, the procuratorate must fully respect the administrative agency’s discretion in the course of its review. Only by doing

so can both parties' authority and responsibility be organically aligned, thus ensuring the proper functioning of reverse coordination between administrative enforcement and criminal justice.

B. Division of Substantive Powers Between Prosecutorial and Administrative Agencies

Originating from civil law systems, particularly Japanese administrative law, the theory of administrative initial judgment authority serves as a fundamental theoretical framework for managing the relationship between administrative power and judicial power. This theory posits that the decision to exercise administrative power, including how and when to exercise it, should primarily be based on the responsibilities of administrative authorities. Judicial power should not be permitted to suppress or substitute administrative authorities in making such judgments.²⁰ The conditions for applying administrative initial judgment authority primarily pertain to lawsuits initiated by parties demanding the imposition of obligations. When the judiciary reviews the passive inaction of administrative agencies, their initial judgment authority should generally be respected. Similarly, in the judicial review of proactive inaction, as long as there are factual issues that need to be clarified or administrative discretion remains, judicial authorities should also respect the initial judgment authority of administrative agencies. Only when the facts have been thoroughly clarified and the administrative agency's discretion has been reduced to zero can judicial authorities transcend the theory of initial judgment authority to directly order administrative agencies to make substantive administrative decisions in accordance with their rulings.²¹

1. Respecting the Initial Judgment Authority of Administrative Agencies as the Boundary of Prosecutorial Authority. — In China's judicial practice of administrative litigation, the theory of initial judgment authority has been applied and recognized. For matters within the administrative agencies' scope

20 See Yang Jianshun, *Types of Administrative Litigation and Perspective on the Reform of China's Administrative Litigation System*, 4 *Journal of Henan Administrative Institute of Politics and Law* 26, 38 (2005).

21 See Huang Xianxiong, *The Theory and Application of the Power for Initial Administrative Judgment*, 5 *Administrative Law Review* 113, 121-122 (2017).

of authority that have not been judged or handled, courts generally do not substitute administrative agencies in making decisions. Instead, they must wait for administrative agencies to handle them first, after which the courts will review the legality of the administrative actions.²² In the administrative compensation case of *Wang Moubo v. the People's Government of Erqi District, Zhengzhou City*, the court recognized that the parties involved had disputes over compensation amounts and housing areas.²³ Based on the theory of initial judgment authority, for matters within the administrative agencies' scope that still have priority for judgment or room for discretion, the people's courts should wait for administrative agencies to handle them first before reviewing their legality. Similarly, in the case of *Ren Jun v. the Housing Expropriation and Compensation Management Office of Yingzhou District, Fuyang City, Anhui Province*, the appellate court held that the first-instance court did not determine the specific amount of compensation, thereby respecting the initial judgment authority and administrative discretion of the administrative agency and maintaining restraint in the judicial review process.²⁴

The theory of administrative initial judgment authority is predominantly applied in managing the relationship between administrative power and judicial power. However, it is equally applicable in handling the relationship between administrative power and prosecutorial power. In China, prosecutorial organs are positioned as legal supervisory bodies and theoretically can conduct comprehensive tracking and supervision of legal supervisory matters discovered during the performance of their duties. However, the legal supervisory authority of prosecutorial organs is not unlimited. Firstly, the supervision exerted by prosecutorial organs over administrative agencies is a form of heterotypic supervision that must not overstep the boundaries between administrative and prosecutorial powers. The prosecutorial organs can correct the unlawful or improper exercise of administrative power, but cannot interfere with the normal operation of administrative authority. Secondly, although the legal supervisory authority possessed by prosecutorial organs is not equivalent to pure judicial power,

22 *Id.*, 114.

23 No. 233 Final Administrative Judgment of Henan High People's Court (2024).

24 No. 538 Final Administrative Judgment of Anhui High People's Court (2020).

it retains the characteristics of judicial power.²⁵ This necessitates that prosecutorial organs maintain a certain level of neutrality based on their relatively independent status during the performance of their duties. They should fulfill supervisory responsibilities strictly within the scope of legal supervision, based on explicit legal provisions and necessary limits, without easily judging specific issues outside the realm of prosecutorial power. This is partly because modern administration is characterized by complexity, specialization, and technicality, making administrative discretion one of the core areas of administrative power.²⁶ Additionally, prosecutorial organs are also responsible for the legal supervision of subsequent potential administrative litigation, aiming to avoid compromising their neutrality by prematurely intervening in the administrative agencies' initial judgments.²⁷ Substituting prosecutorial authority for administrative agencies in making judgments and exercising discretion not only is highly unrealistic but also leads to the erosion of prosecutorial authority over administrative power, ultimately undermining the balance of state powers. After all, prosecutorial supervisory authority fundamentally remains within the scope of judicial supervision, alongside the people's congress, the supervisory commission, and the people's courts, forming an external supervisory system over administrative power. Therefore, prosecutorial organs must adhere to the functional boundaries between state agencies, 'not deviating from prosecutorial functions nor exceeding prosecutorial authority'.²⁸

2. Applicability Scenarios for Prosecutorial Organs Respecting the Initial Judgment Authority of Administrative Agencies. — From the perspective of reverse coordination, how should prosecutorial organs specifically respect the initial judgment authority of administrative agencies? In the realm of administrative law implementation, prosecutorial authority

25 See Men Zhongjing, *Responsibility Connotation and Conceptual Reshaping of Legal Supervision*, 6 Law Review 9, 13-15 (2022).

26 See Cheng Haonan, *On the Administrative Power of Primary Judgment*, 2 Law and Economy 100, 111-112 (2024).

27 The doubt regarding impartiality here refers to the situation where, if the prosecutorial organ, in the absence of administrative authority initiation and not constituting administrative inaction, ignores the administrative organ's initial judgment and requires it to make administrative decisions based on the prosecutorial organ's substantive judgment, then once such decisions lead to administrative litigation requiring prosecutorial supervision, it will inevitably raise doubts regarding whether such supervision will be constrained and interfered by the prosecutorial organ's prior substantive judgments, thereby leading the parties to doubt the impartiality of prosecutorial supervision.

28 See Ying Yong, *Study, Practice and Understand Xi Jinping Thought on the Rule of Law and Use 'Three Abilities' to Effectively Handle Each Case with High Quality and Efficiency*, 8 People's Procuratorial Semimonthly 1, 8 (2024).

is effectively endowed with a dual role as legal supervisors, i.e., overseeing judicial judgments by courts and supervising the execution of laws by administrative agencies. However, according to the *Opinions of the Central Committee of the Communist Party of China on Strengthening the Legal Supervision Work of Prosecutorial Organs in the New Era*, prosecutorial organs may intervene and issue supervisory suggestions when they identify administrative agencies' unlawful exercise of authority or failure to exercise authority in accordance with the law.²⁹ This indicates that prosecutorial intervention is only permissible when administrative agencies fail to fulfill their duties or unlawfully perform them, rather than prematurely utilizing supervisory measures before administrative agencies have completed their initial judgment authority. Of course, this requires analysis in conjunction with the administrative agencies' duty performance patterns and specific circumstances of non-performance of duty.

In normal administrative law enforcement, aside from the most common scenario where administrative agencies independently complete the entire law enforcement process, there are three other states for duty performance: (1) duty performance suspension, where administrative agencies cease to perform duties after transferring cases through positive coordination and leave their handling to criminal justice authorities, (2) concurrent duty performance, where, after transferring cases to judicial authorities, administrative agencies continue to impose administrative penalties or other sanctions in accordance with administrative law norms without conflicting with future criminal justice judgments (for example, imposing administrative penalties such as administrative detention or fines that offset corresponding criminal penalties), and (3) post-duty performance, where cases are directly accepted and processed by judicial authorities without positive coordination, and administrative agencies only initiate administrative procedures after judicial authorities reversely transfer the cases.

In practical coordination between administrative enforcement and criminal justice, the first and third states of duty performance are the most common. The former arises from the respect for judicial authority and the

29 See *Opinions of the Central Committee of the Communist Party of China on Strengthening the Legal Supervision Work of Prosecutorial Organs in the New Era* (issued on June 15, 2021), chapter 3, article 10.

adherence to the criminal priority principle, leading to 'subjective inability to perform duties'; while the latter results from judicial authorities' prior intervention, causing 'objective inability to perform duties'. However, both share the common characteristic of not actually initiating administrative procedures and thus do not produce substantive administrative decisions, indicating that the initial judgment authority of administrative agencies should be respected by prosecutorial organs. The second scenario, although relatively rare, cannot be entirely ruled out. For instance, if a business operator is sentenced for food safety crimes while the administrative agency also imposes fines and revokes the business license, the administrative agency has already initiated administrative procedures concurrently with the criminal justice process. This may involve a clear refusal to perform duties (e.g., deciding not to take action after investigation or the administrative disposition being offset by a parallel criminal justice decision) or incomplete duty performance (e.g., not fulfilling duty of all aspects or waiting for potential offset or conflicting criminal judgments), as well as delayed duty performance (e.g., having a statutory duty but exceeding the statutory deadline without making substantive administrative decisions). Strictly speaking, once administrative agencies initiate administrative procedures, there is no longer a necessity for reverse transfer, thus falling outside the scope of reverse coordination. However, in such cases, prosecutorial organs should decide whether to respect the initial judgment authority of administrative agencies based on specific identification. If administrative agencies need to conduct fact-finding (e.g., requiring the reverse transfer of evidence by judicial authorities), or if there is still room for legal application and administrative discretion, the initial judgment authority should still be respected. Even if administrative agencies have exceeded case handling deadlines without justifiable reasons, prosecutorial organs can only adopt supervisory measures to urge their duty performance. Only when prosecutorial organs have completed all fact-finding, legal application remains unambiguously singular, and administrative discretion has been reduced to zero, can prosecutorial organs initiate public interest litigation for supervision through prosecutorial suggestions.

Thus, within the framework of reverse coordination that uses 'transfer' as a procedural judgment element, prosecutorial organs should generally

respect the initial judgment authority of administrative agencies. Only when administrative agencies unlawfully fulfill or fail to fulfill their duties can prosecutorial organs exercise their legal supervisory authority. Otherwise, it is not only a disregard for objective circumstances but also an overstepping of administrative power. Consequently, only when administrative agencies clearly refuse to file cases (refuse to perform duties) or delay in filing cases (delay duty performance) can prosecutorial supervision intervention be warranted. After the case filing procedure, prosecutorial organs should also treat subsequent actions of administrative agencies regarding administrative penalties with caution and appropriately manage the scope of supervision.³⁰

3. *Accurately Identifying the Specific Forms of Administrative Agencies' 'Failure to Fulfill Statutory Duties' and the Timing for Prosecutorial Supervision Intervention.* — At the current stage, regarding the specific forms of ‘failure to fulfill duties’ by administrative agencies in reverse coordination case handling, although not explicitly enumerated in administrative law norms, the seven scenarios listed in the *Rules for Handling Public Interest Litigation Cases by the People's Procuratorate* provide a reference.³¹ The first scenario is ‘delayed duty performance’, primarily including situations where administrative agencies fail to respond to prosecutorial opinions within the deadline, do not take effective measures to advance duty performance, have responded to prosecutorial opinions but have not actually performed duties, and have begun duty performance after responding to prosecutorial opinions but unjustifiably delayed duty performance. The second scenario is ‘incomplete duty performance’, primarily including cases where administrative agencies have responded to prosecutorial opinions and declared duty completion but have not fully evaluated the unlawful actions of the parties involved, or where duty performance involves procedural violations. The third scenario is ‘clear refusal to perform duties’, where administrative agencies proactively indicate, through express statements or other actions recognizable by prosecutorial organs, their intent not to undertake duty performance measures. Different approaches should be

30 In such cases, it is also necessary to distinguish among the three situations of administrative agencies delaying duty performance, withdrawing the case after filing to indicate non-performance of duties, and incompletely performing duties to initiate different supervisory mechanisms.

31 *Rules for Handling Public Interest Litigation Cases by the People's Procuratorate* (effective on July 1, 2021), article 82.

followed in addressing these three scenarios.

Firstly, in cases of 'clear refusal to perform duties', once administrative agencies' explicit refusal to perform duties is communicated to prosecutorial organs, the prosecutorial organs can initiate supervision since administrative agencies are no longer likely to voluntarily perform their duties.

Secondly, in cases of 'delayed duty performance', a case-by-case discussion is necessary. Situations where administrative agencies fail to respond to prosecutorial opinions within the deadline may constitute another form of 'refusal', albeit a passive one. To avoid procedural stagnation, prosecutorial organs need to assess the duty performance of administrative agencies. For instance, if administrative agencies have not responded but have effectively undertaken duty performance measures, the timing for intervention is not yet mature. Only when prosecutorial organs determine that administrative agencies have neither responded nor taken effective measures should they intervene with supervision. The appropriate time for such intervention is at the point of completing the judgment. In cases where administrative agencies have responded to prosecutorial opinions but have not performed duties, or have begun duty performance after responding but unjustifiably delayed duty performance, prosecutorial organs' decision to intervene should depend on when the risk of procedural stagnation caused by the 'delay' becomes imminent. A more definitive time standard should be the expiration of the deadline for issuing administrative penalties.

Lastly, in cases of 'incomplete duty performance', administrative agencies may appear to have completed duty performance on the surface but have, in reality, omitted to evaluate the unlawful actions or have procedural violations in duty performance. In such instances, prosecutorial organs should intervene with supervision when they 'discover or should discover' flaws in duty performance. This is because, once administrative agencies declare duty completion, they at least 'perceive themselves' as having fulfilled all their responsibilities, thereby potentially losing the motivation to correct any flaws. Prosecutorial organs can only adopt supervisory measures to prevent reverse coordination from entering a deadlock. Thus, intervention should be initiated in cases promptly upon 'discovery or should discovery'.

In summary, when administrative agencies fail to perform their duties, prosecutorial organs must consider the appropriate timing for intervention

while adhering to the corresponding ‘maturity principle’. In administrative litigation, ‘maturity’ refers to the application of judicial review only when the administrative actions have had a tangible adverse impact on the parties involved and are suitable for judicial scrutiny.³² In reverse coordination, the ‘mature’ timing for prosecutorial supervision intervention should consider whether administrative agencies have lost the motivation to perform their duties and whether the risk of procedural stagnation has become imminent.

The application of the initial judgment authority theory in reverse coordination also imposes new requirements on the content of prosecutorial opinions issued by prosecutorial organs. The specific content of prosecutorial opinions should, at the very least, reflect respect for the initial judgment authority of administrative agencies and should not easily overstep the boundaries of prosecutorial authority. Therefore, based on providing details of criminal case handling and basic administrative violation clues, it is advisable to issue ‘abstract opinions’ to avoid specificity. The language used should be rational and concise, avoiding ‘commanding’ language to adopt a more appropriate prosecutorial supervisory approach. When drafting prosecutorial opinion letters, prosecutorial organs should consider not only the legality of the content but also whether the prosecutorial opinions are objectively implementable.

IV. REFORM MODELS AND APPROACHES FOR IMPROVING CHINA’S REVERSE COORDINATION SYSTEM BETWEEN ADMINISTRATIVE ENFORCEMENT AND CRIMINAL JUSTICE

Based on clarifying the division of functions and the operational boundaries between administrative power and prosecutorial power within the reverse coordination system between administrative enforcement and criminal justice, China can, in the future, promote the legal refinement of the system from two perspectives: the operational model and the legislative model of reverse coordination.

32 See Shi Youqi, *Establishing the Doctrine of Ripeness in Administrative Litigation in China*, 1 Administrative Law Review 62, 62-63 (2004).

A. Constructing an Operational Model of 'Front-End Collaboration and Back-End Supervision'

In order to further deepen the reform of the reverse coordination system between administrative enforcement and criminal justice, it is advisable to consider the 'two-stage operational model' of 'front-end collaboration and back-end supervision' as the primary direction for future reforms. In this two-stage reform approach, prosecutorial organs should assume the roles of coordinators and supervisors at different stages. The reverse coordination system between administrative enforcement and criminal justice can essentially be divided into two stages. The first stage is the 'coordination stage' as reflected in the name of the system itself. During this stage, prosecutorial organs need to determine through internal procedures whether a case should be handled by administrative law enforcement agencies. If it is necessary to transfer the case to administrative law enforcement agencies, the prosecutorial department handling the case will transfer it to the administrative prosecutorial department for review. If the administrative prosecutorial department deems administrative penalties necessary, the case will be transferred to the administrative law enforcement agency through the transfer process, along with prosecutorial opinions. Additionally, administrative law enforcement agencies will be required to respond to and handle the prosecutorial opinions within a specified timeframe until the prosecutorial organ receives a response from the administrative agency or is informed of the handling status.

During the 'coordination stage', prosecutorial organs complete internal coordination within the prosecutorial system, i.e., transferring cases from the original handling department to the administrative prosecutorial department for review, and subsequently completing coordination between prosecutorial and administrative agencies by transferring cases to administrative law enforcement agencies for processing, thereby achieving a balance in the allocation of authority and responsibility. Since the act of 'transfer' itself does not constitute legal supervision, prosecutorial opinions, although possessing legal supervisory attributes, do not inherently carry coercive power. The initiation of supervisory procedures still requires subsequent judgment by prosecutorial organs. Only after the deadline for administrative agencies

to respond to prosecutorial opinions has indeed expired can prosecutorial suggestions with obvious coercive power and more supervisory attributes, as well as other legal supervisory measures, be implemented progressively. Prosecutorial organs then have the capacity to impose highly targeted regulations on administrative agencies' failure to perform duties or unlawful performance of duties. In the 'supervision stage', unless administrative agencies have legitimate reasons to explain their failure to perform duties or raise objections according to statutory procedures,³³ there is essentially no room for further negotiation between administrative and prosecutorial organs. Administrative agencies must bear the adverse consequences of failing to perform their duties. In summary, during this stage, a clear supervisory and supervised relationship exists between prosecutorial and administrative agencies. The introduction of a more robust supervisory mechanism also facilitates the rapid elimination of unlawful state and the prevention of procedural idleness.

It is evident that in both the 'coordination stage' and the 'supervision stage', prosecutorial organs undertake different tasks and can employ different measures. Only by adopting the two-stage reform approach of 'front-end collaboration and back-end supervision' can the focus on key tasks at different stages be achieved, thereby enhancing both the quality and efficiency of reverse coordination. During the coordination stage, the main reform direction is to improve the efficiency of transfers, further refine and clarify the content design of prosecutorial opinions, and avoid excessive interference by prosecutorial organs in the judgment and discretion of administrative agencies. In the supervision stage, it is necessary to further eliminate potential supervisory loopholes, reflecting a stance of strict supervision while still respecting the discretion of administrative agencies. When determining whether administrative agencies have indeed failed to perform their duties, prosecutorial organs must at least identify laws, regulations, rules, and discretionary standards as the basis for supervision.

The two-stage reform approach of 'front-end collaboration and back-end supervision' is supported by traditional administrative law theory. Prosecutorial power and administrative power are two distinct types of state

33 See *Provisions on the Work of Prosecutorial Suggestions of the People's Procuratorate* (effective on February 26, 2019), article 23.

power, but neither is absolutely superior to the other. The supervision of administrative power by prosecutorial power is fundamentally based on the constitutional positioning of the prosecutorial system as a legal supervisory body within the socialist legal system with Chinese characteristics. Based on relevant provisions of constitutional and organizational law and the structure of state power, supervisory activities must respect the inherent characteristics and boundaries of administrative enforcement activities, adhere to the boundaries of prosecutorial power, maintain an objective and impartial stance, and actively fulfill supervisory responsibilities in accordance with the law. This approach must comply with the general requirements of the formal rule of law while also addressing the substantive needs of the rule of law in the current era.³⁴ Prudently exercising prosecutorial power in line with the characteristics of each stage of reverse coordination, and precisely conducting coordination or supervision, inherently meets the requirements of the substantive rule of law. It is conducive to addressing the primary contradictions in reverse coordination work, deepening administrative prosecutorial supervision, and promoting the creative development of comprehensively advancing law-based governance and building a law-based government.

*B. Adhering to the Reform Principle of
'Always Establishing New Systems Before Abolishing Old Ones While
Attaching Equal Importance to Efforts in Both Respects'*

It was stated at the Third Plenary Session of the 20th Central Committee of the Communist Party of China in the *Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization*: 'Strengthening institutional building as our main task. We must strengthen top-level design and overall planning, always establishing new systems before abolishing old ones while attaching equal importance to efforts in both respects. We must consolidate foundational systems, refine basic systems, and innovate important systems.' Since the institutional reforms in 2018, the structural

³⁴ See Zhang Zhiyuan, *The Functional Orientation of Procuratorial Supervision of Administrative Illegality*, 2 Journal of National Prosecutors College 57, 57-59 (2024).

system and functional configuration of prosecutorial organs have undergone profound changes. As an important institutional achievement in the reform of the prosecutorial system in the new era, the reverse coordination system between administrative enforcement and criminal justice does indeed have room for continued evolution. To date, various departments of the State Council and provincial and municipal governments have successively issued regulations related to reverse coordination. It is foreseeable that more normative documents related to reverse coordination will be issued in rapid succession, and prosecutorial organs at all levels may further explore administrative prosecutorial supervisory functions and reverse coordination mechanisms in their work.

It is noteworthy that the current separation of ‘administrative and criminal’ norms in China has resulted in significant overlap in normative content, strong subjectivity in application, and inconsistent pacing of legal implementation.³⁵ Although prosecutorial organs at all levels are vigorously advancing reverse coordination work, China’s reverse coordination system between administrative enforcement and criminal justice still needs improvement. While there is a necessity for developmental innovation, it is inadvisable to attempt to breach the *Organic Law of the People’s Procuratorates* and the boundaries of prosecutorial authority. After all, legal certainty is not an experiential or linguistic fact but a legal characteristic that ultimately relies on the normative premises.³⁶ The most crucial task at present should be to further refine legislative support, initially improving the essential systems that need to be detailed, and filling existing loopholes in the basic system. Only when the clarity of the existing system is significantly enhanced and the foundational system construction is essentially completed can various institutional innovations be implemented in a relatively stable state. At this stage, effectively translating proven innovative measures into legislative content can truly form an efficient and orderly reverse coordination system architecture. Allowing prosecutorial organs in various regions to prematurely and hastily advance institutional innovations based solely on their judgments, without clear foundational systems, will inevitably

35 See Liu Yi, *supra* note 2, 24.

36 See Richard M. Re, *Clarity Doctrines*, 86(6) *University of Chicago Law Review* 1497, 1505 (2019).

lead to conflicts and contradictions between systems, increasing the risk of prosecutorial authority encroaching on administrative power. In other words, during the current phase of reforming and refining the coordination system between administrative enforcement and criminal justice, every effort should be made to avoid the mistaken notion that 'reform must charge headlong into legal 'forbidden zones', with reform taking precedence over the law'.³⁷ It is essential to prevent real-world legal practice from arbitrarily overriding the fundamental aims of existing legislation under the pretext of reform. Only by first achieving the 'establishment' in the foundational system can subsequent institutional innovations in 'abolishment' have practical significance.

In order to achieve the requirement of 'always establishing new systems before abolishing old ones while attaching equal importance to efforts in both respects', it is necessary to consider the specific legislative hierarchy issues of the reverse coordination system. Firstly, if the reverse coordination system is understood as a necessary extension of the litigation system, then according to the *Legislation Law*,³⁸ relevant matters within the reverse coordination system must be stipulated by law, including the prosecutorial opinion system. Currently, most provisions related to reverse coordination are found in lower-level procuratorial normative documents, which clearly conflicts with the principle of legal reservation and raises questions regarding their legitimacy. Secondly, even if the reverse coordination mechanism is not seen as falling exclusively within the scope of statutory law, one must still address how norms at different legislative levels should be allocated in building this mechanism. Without dedicated legislation for reverse coordination, the basic and detailed provisions related to prosecutorial duties should be incorporated into judicial interpretations issued by the Supreme People's Procuratorate. Pursuant to the *Provisions of the Supreme People's Procuratorate on Judicial Interpretation Work*,³⁹ such interpretations would require formal project initiation, drafting, and deliberation, followed by filing and review by the Standing Committee of the National People's Congress. Accordingly, it is not advisable to continue relying on lower-level

37 See Huang Wenyi, *Reform, Legal Change, and Chinese-Style Modernization: Legal Interpretation of the Spirit of the Third Plenary Session of the 20th Central Committee of the Communist Party of China*, 5 *The Jurist* 1, 14 (2024).

38 *Legislation Law* (revised in 2023), article 11.

39 See *Provisions of the Supreme People's Procuratorate on Judicial Interpretation Work* (revised on March 20, 2019).

procuratorial normative documents to establish these rules.

In summary, the law is vital to national governance, and good laws are a prerequisite for good governance. The rule of law firstly entails the governance by rules, ensuring formal legality, and more importantly, the governance by good laws, ensuring substantive justice.⁴⁰ Only by progressively refining top-level and collaborative legislation for the reverse coordination system between administrative enforcement and criminal justice, and gradually forming a comprehensive and internally coordinated legal normative system, can we foster a long-term mechanism for China's reverse coordination system between administrative enforcement and criminal justice under the rule of law. Reflecting on the experiences and limitations within the current legal normative system, it is recommended to further improve the legal normative system for reverse coordination in the following aspects. Firstly, we must progressively improve top-level legislation. Currently, provisions related to reverse coordination are dispersed across various departmental laws and regulations without forming a comprehensive, systematic, and internally coordinated institutional framework. A thorough review of existing legal norms should be conducted to extract common elements and summarize uniformly applicable provisions, thereby establishing the basic system of reverse coordination system between administrative enforcement and criminal justice in legal form. Secondly, we must diligently promote collaborative legislation. China has already developed collaborative norms in areas such as drug regulation.⁴¹ Administrative law enforcement agencies and judicial authorities should strengthen close cooperation, optimize the coordination procedures for reverse coordination based on the summary of law enforcement experiences, and formulate collaborative norms for specialized law enforcement fields. Thirdly, we must use community innovative practices to drive institutional reforms, further advancing the principle of 'always establishing new systems before abolishing old ones while attaching equal importance to efforts in both respects'. We should

40 See Zhou Youyong, *The Spirituality of China's Fundamental Administrative Code*, 3 Tribune of Political Science and Law 61, 69 (2022).

41 In January 2023, the National Medical Products Administration, the State Administration for Market Regulation and the Ministry of Public Security et al. jointly issued the *Measures for the Coordination Work Between Drug Administrative Law Enforcement and Criminal Justice*.

encourage localities to pilot and innovate within the legal framework, develop innovative coordination and linkage mechanisms, and promptly elevate effective practices to legal norms. We should further promote refined legislation to resolve procedural bottlenecks and difficulties in reverse coordination, enhance the professionalism and precision of prosecutorial supervision, optimize the internal functional division of prosecutorial organs, and promote the construction of a closed-loop bidirectional coordination system between administrative enforcement and criminal justice.

V. CONCLUSION

Ensuring the effective bidirectional coordination between administrative enforcement and criminal justice is not only a fundamental requirement for upholding the principles of law-based administration and impartial justice but also an essential demand for advancing the comprehensive rule of law in the country. It was stated at the Third Plenary Session of the 20th Central Committee of the Communist Party of China: 'Staying committed to law-based governance on all fronts. We must deepen reform and advance Chinese modernization under the rule of law and ensure unity between reform and the rule of law, seeing that all major reforms have a solid legal basis and that reform achievements are elevated to law in a timely manner.' This directive elucidates the path for reforming China's reverse coordination system between administrative enforcement and criminal justice, emphasizing the dialectical unity of abolishment and establishment, i.e., always establishing new systems before abolishing old ones while attaching equal importance to efforts in both respects. While significant progress has been made in the current reforms of reverse coordination, the system inevitably faces prominent issues arising from the systemic inadequacies of top-level legislative frameworks, leading to disjointed actions by administrative and prosecutorial authorities. In the process of advancing the legal refinement of the reverse coordination system, the primary challenge lies in addressing the 'establishment' aspect. This entails that the highest legislative bodies, after thoroughly listening to and coordinating the reform demands of administrative and prosecutorial agencies, and fully respecting the administrative agencies' initial judgment authority, should legislate or

amend laws to clearly define the fundamental division of powers and basic collaborative mechanisms between the two. This will subsequently provide space for making dual efforts, fulfilling respective responsibilities, and promoting collaborative advancement in the ‘abolishment’ aspect of reforms between administrative and judicial powers. Only then can China’s reverse coordination system between administrative enforcement and criminal justice achieve steady and swift reform within the framework of ‘the unity of abolishment and establishment’.

(Edited by Gong Li)

行刑反向衔接制度的中国实践与完善路径

内容提要 党的二十届三中全会明确提出“完善行政处罚和刑事处罚双向衔接制度”重大改革任务安排，引发了理论界与实务界对我国行刑反向衔接制度的高度关注。通过检视该项制度的发展脉络及其实践状况可以发现，这项极具中国特色的法治工程在呈现其制度优势同时，也存在理论基础模糊、制度尚待补全和操作性不强等亟待完善的空间。行刑反向衔接的法治化完善路径，应在尊重行政机关首次判断权基础上，厘清检察机关与行政机关的职能分工，进而按照“前端协作+后端监督”的改革模式，遵循“破立并举、先立后破”的改革思路来有序推进。通过针对性解决行刑反向衔接实践中核心问题，最终促成行政处罚与刑事处罚、行政执法与刑事司法之间的依法高效双向衔接。
