Theoretical reflection and Realization of prosecutor's objective obligation

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Abstract: *Although objective obligation originated in Germany, its subsequent wide spread and development in the world, including common law countries, shows that this theory has gone beyond the original connotation given by the theoretical and institutional background of civil law system: on the basis of the reality of the substantiv[ ]e imbalance between the prosecution and the defense, objective obligation has become a restriction on the exercise of the state's right of prosecution. Safeguarding the legitimate operation of state power is an important institutional guarantee. Objective obligation has the dual attributes of principle and system. Its theoretical basis lies in the legitimacy theory of state prosecution behavior, which is manifested in three aspects: the obligation of pursuing truth, the obligation of procedural guarantee and the obligation of pursuing the purpose of prosecution.*
Key words: *objective obligation; legitimacy of prosecution; realization*

On the concept and attribute of prosecutor's objective obligation

Through the repositioning of the concept of "legal guardian", German liberalists try to transform the emerging procuratorial organ into "an objective organ with the obligation to maintain substantive truth and justice", and strictly restrict the exercise of the procurator's public prosecution power with legalism. However, just as attributing the birth origin of the procuratorial organ to the thought of freedom and rule of law "is an overly optimistic and romantic imagination to some extent", the essence of the procurator as a prosecution organ is submerged in the declaration of "judicial office" and "legal guardian" put forward by the optimists.

The concept of "legal guardian" and Legalism respectively endow prosecutors with the responsibility of maintaining legal authority and abiding by the provisions of the law. Although the starting point of this setting is to create the prosecutor into an "independent office" to maintain the unity of the legal system, and to prevent the prosecutor from abusing the power of public prosecution with strict legalism. However, the law is formulated and recognized by the state. "In the history of legislation, the guardian of the law protects the interests of the state, and the protection of personal interests is only mentioned at the level of interpretation".[Zhen Zhen: Comparative study on procuratorial system, Law Press, 2010edition, page 161.] Similarly, due to the application of the principle of legality, the "fair and objective" role of the procuratorial organ can only be realized by maintaining the implementation of the law, that is, its essence is to maintain the realization of the law and then realize the justice of the law. To some extent, the realization of the justice is only related to the quality of the legal content, not the merit of the procurator. At the same time, the prosecutor is also a national prosecution organ in essence. Punishing crimes without exception under the principle of legality is its inher-

ent mission. Under the principle of national prosecution, it also takes safeguarding the national (public) interests as the starting point. Such a prosecution role defines that the prosecutor is easy to ignore or abandon the rights and interests of individual citizens prosecuted in the process of prosecution. By exerting influence on legislation and criminal policy, government power obtains control over procuratorial organs and even courts. Under the high hat of "legal guardian", there is an attempt of government power to intervene in justice, and the consequences of judge supervision naturally lead to "the government has the opportunity to exert influence on justice". [Wei Wu: French German procuratorial system, China procuratorial publishing Press, 2008 edition, page 158.]During the Nazi period in Germany, the procuratorial organ became an "established control organ", which is an obvious example.

The procuratorial organ is recognized as the judicial office, in part because its "concept as an objective organization" is still recognized and believed, and the procurator as the judicial office can also give more powerful guarantee and legitimacy to its objective obligations. Due to the limitation of the length and theme of this article, the author has no intention to discuss too much about the legal positioning of the procuratorial organ. However, no matter what kind of attribute the procurator is defined, the subordinate bureaucratic organization and the responsibilities as the prosecution organ will not be changed in the slightest. Therefore, the author believes that the grasp of the essence of the prosecutor's objective obligation should not start from its "judicial officer" attribute, but from the essence that the prosecutor is the prosecution organ, focusing on the imbalance in the litigation status, litigation structure and judicial resources of the prosecution and defense under the principle of national prosecution. In essence, the objective obligation of prosecutors is to correct this imbalance, to restrict the state prosecution, and to weaken the color of state prosecution on the premise that the procuratorial organ is the prosecution organ.

Objective obligation is embodied in the formal legal sources of various countries. It is not a litigation idea only existing in the thoughts of jurists or a professional ethics only existing in the practice morality of prosecutors. From the external manifestation of the objective obligation, the objective obligation of the prosecutor is expressed in a number of scattered legal principles, rules and judicial precedents. The objective obligation refers to the various litigation systems that express the core of its principles in the legislation, which is also reasonable because: first, the original intention of the objective obligation is a special obligation to regulate and run through all the criminal prosecution activities of the prosecution organ. It has different contents and forms in different litigation stages, and a single principle or rule attribute is difficult to cover all the contents. The establishment of institutional attributes, whether from the local research of each stage or the whole of criminal prosecution, will help to describe and grasp the objective obligation. Second, the objective obligation "the huge contrast between theory and practice" makes this principle criticized. The author believes that the main reason is that people have given prosecutors roles and expectations beyond their basic functions, and idealized, idealized and ethical these roles and expectations that have not been realized in practice, so that objective obligations have become a banner or a declaration and have been shelved. In fact, only the objective obligation at the legal and institutional levels can be implemented and regulated in practice. Although it can also contain all the contents of the objective obligation at the ethical level, such "objective obligation" obviously can-not become the content of the law and has no legal significance. In other words, as a litigation system, although the objective obligation can have the content of the prosecutor's ethics, it only has the flesh of the legal norms, and the objective obligation can-not reach the contents and fields such as inner justice and

conscience that cannot be regulated by the law.

Theoretical basis of prosecutor's objective obligation

No matter in the countries of common law system or civil law system, the rise of a system must have its theoretical basis or institutional origin, which is particularly obvious in the countries of civil law system. For the objective obligation of prosecutors, the principle of state prosecution, the principle of legality, authenticity and cheapness are the institutional origin of its emergence and development. The author believes that the theoretical basis of objective obligation is mainly reflected in the following three aspects: the principle of fair prosecution, the principle of purposeful prosecution and the principle of equal prosecution. The first two reflect the substantive legitimacy of state prosecution, while the latter reflects the procedural legitimacy of state prosecution.

Justice is the primary value of the social system, just as truth is the primary value of the ideological system. [Rawls: On justice, China Social Sciences Press, 1998 edition, page1.]As the initiation and preparation stage of criminal proceedings that may convict and sentence the accused, and then deprive the accused of property, freedom and even life, criminal prosecution is undoubtedly of great significance to the embodiment and implementation of the value of justice. Due to the secrecy and social harmfulness of criminal acts, the state needs to mobilize a large number of social resources and national coercive force for investigation and detection. Therefore, in the prosecution stage, the reality of substantial imbalance between state organs and the accused is very easy to cause violations of the legitimate rights of the accused and the innocent; the confidentiality of the prosecution process and the adoption of coercive measures also increase the difficulty of the relief of the rights of the opposite party. Therefore, it is particularly important to restrict the abuse of prosecution power within the prosecution organ and ensure and reflect the justice of prosecution behavior. Specifically, the principle of fair prosecution includes substantive prosecution justice and procedural prosecution justice. "Each gets his place and does not infringe on each other" and "give everyone what he deserves" reflect the original view of substantive justice. In modern criminal prosecution activities, substantive justice is mainly reflected in the fact that the prosecution organ finds out the facts of the case and comprehensively collects the relevant evidence of the case, in order to lay the factual foundation for the trial work of the court. The procedural justice is manifested in the justice of the process and steps of the prosecution behavior made by the state organs, mainly in the process of prosecution. The legal procedure according to the state organs should comply with the concept of justice.

The principle of purposive prosecution refers to the principle that the prosecution organ should prosecute the crime in a rational way based on the comprehensive consideration of the purpose of criminal prosecution, the social effect of prosecution and the efficiency of prosecution. The ideological basis of the principle of purposive prosecution mainly comes from the thought of purposive punishment and the attention to the economic efficiency of law. The thought of purposeful punishment holds that the purpose of punishment is not only to deter crime and realize retributive punishment, but also to prevent crime, educate crime and take the public interest as the starting point. The use of penalty should be cautious and purposeful, and the special preventive function of penalty should be realized through the differential treatment of criminals. The concern about legal and economic efficiency comes from the seriousness and increasing complexity of social criminal crimes

after World War II. The conflict between the limited judicial resources and the heavy judicial tasks is becoming more and more prominent. The surge in the number of criminal cases shows the shortage and shortage of judicial resources. In this way, in the case of limited judicial resources, constantly optimizing the judicial input-output ratio, obtaining the maximum judicial income and optimizing the allocation of judicial resources has become the value goal of the general demand of judicial organs, which is particularly obvious in the prosecution organs.

The principle of equal prosecution refers to the principle that in the process of prosecution, the prosecution organ should try its best to ensure the realization of the defendant's right of defense or relief. The equality in criminal procedure is mainly the same or equivalent in litigation status, litigation rights and obligations between the accuser and the defender. In the process of litigation, as long as the equality of prosecution and defense is realized, the neutrality of judges can be realized; As long as the neutrality of judges is realized, the impartiality of judges can be realized to the greatest extent. [Zhou Ye-Qian, On Institutional Law, China University of political science and Law Press, 1986edition, page36.]To avoid leaning to either side, the balance between the accused and the accused is not only able to protect the litigation rights of the suspect and defendant, but also the equal confrontation between the two sides helps to form the "isosceles triangle" structure. The neutral neutrality of the judge is more substantive and conducive to the formation of the outcome justice. At the same time, in the litigation stage, the defense is the most powerful supervisor and dissident of the prosecution, and plays an important role in supervising the criminal prosecution. Specifically, the principle of equal prosecution mainly has two aspects: first, in the process of prosecution, the accused should enjoy a wide range of defensive and relief rights, such as the right to defense, the right to silence, the right to request a lawyer to be present and lodge a complaint; Second, in the process of prosecution, as a prosecution organ with strong national resources and coercive force, the realization of the above legitimate rights of the accused should be guaranteed in the process of prosecution.

Content of prosecutor's objective obligation

The research on the content of prosecutor's objective obligation has always been a proposition with different opinions in the academic circles. The author believes that the ambiguity of the content orientation of objective obligations is due to, on the one hand, that compared with other subjects or systems, the research on procuratorial organs or objective obligations only appeared after the modern judicial reform, is not perfect compared with other procedural systems, and the establishment and Research on procuratorial objective obligations have just begun, some important theoretical problems need to be further studied. On the other hand, by grasping the essence of the prosecutor's objective obligation, the objective obligation is a special obligation borne by the imbalance between the prosecution and the defense in the process of criminal proceedings. Based on this situation, the content of objective obligation should be determined by generalization and enumeration, and whether it belongs to objective obligation should be screened according to its essence and purpose value. The author believes that the content of objective obligation should have the following characteristics: first, from the content attribute, objective obligation should be the unilateral litigation responsibility of the prosecution organ, and does not have litigation equivalence. Secondly, the objective obligation is formed by the prosecution organ based on the prosecution behavior. Therefore, the objective obligation should be based on the prosecution behavior of the prosecutor, and the object can only be the litigant or the facts of the case.

Finally, the content of objective obligation should reflect the purpose value of objective obligation. Based on the above characteristics of the objective obligation, the author believes that the prosecutor's objective obligation includes three aspects: the obligation of pursuing truth, the obligation of procedural guarantee and the obligation of pursuing the purpose of prosecution (the latter is also called the rational obligation of prosecution).

The obligation of procedural guarantee refers to the duty of the prosecutor to prosecute the crime according to the legal procedure and protect the litigation rights and interests of the accused caused by the prosecution behavior. The obligation of procedural guarantee includes two aspects: one is to prosecute crimes in accordance with legal procedures to ensure the legitimacy of the prosecution process and the effective implementation of litigation procedures; the second is to protect the litigation rights of the accused caused by the prosecution behavior. The former is a negative guarantee and the latter is a positive guarantee. The former embodies the formal significance of the principle of legality of criminal procedure in the field of criminal procedure. "The principle of criminal legitimacy in the formal sense requires that the investigation of any criminal responsibility must be carried out in accordance with the criminal procedure established by law, while the principle of criminal procedure legitimacy in the substantive sense requires that not only the established procedure be carried out, but also the procedure is due process."[Chen Wei-Dong: The road of procedural justice (Volume I), Law Press, 2005 edition, page 72.]Therefore, in practice, the prosecutor's illegal prolonged detention and illegal acquisition of evidence involved in the case are violations of the objective obligations of prosecutors. Accordingly, in the stage of examination and prosecution, the prosecutor's responsibility to exclude illegal evidence is the organic content of objective obligation. The latter's direct protection of the rights and interests of the accused are based on the principle of equality of public prosecution power. Ensuring the minimum equality between prosecution and defense in criminal proceedings is not only in line with the requirements of procedural justice and the purpose of establishing objective obligations, but also the most direct and obvious embodiment of objective obligations in proceedings. "The independent value of the right of public prosecution is also reflected in the realization of the guarantee function, which is also the objective obligation of the prosecutor in criminal proceedings."[Hao Yin-Zhong: Principles of criminal public prosecution, People's court press, 2004 edition, page 20.]such as the prosecutor's obligation to care for the accused in the process of prosecution, the obligation to inform his rights and obligations, the obligation to inform the content of the indictment, the obligation to guarantee the defender's reading right, the obligation to reveal evidence before trial, making a request for innocence for the interests of the defendant and a protest for the interests of the defendant are the embodiment of the obligation of procedural guarantee.

The duty of pursuing truth refers to the duty that prosecutors should pursue and be loyal to the truth in the process of prosecution under the principle of investigation. Prosecutors should try to find the truth, which is not only the requirement of substantive justice value for prosecution activities, but also the responsibility guarantee for prosecutors to examine the factual evidence of the case rationally and objectively. The meaning of truth includes objective facts and legal facts. The former refers to the objective existence of real history, which is authentic, historical and irreducible; The latter refers to the fact records with legal significance revealed by evidence materials, which are fragmented and reviewable. The coincidence of objective facts and legal facts is the perfect outcome expected by the lawsuit. However, because "the legal fact is actually an objective fact with strong subjective discretion and man-made choice, which is added to man's will", there

will inevitably be differences and even contradictions between objective facts and legal facts. It can be said that after the establishment of the principle of evidence adjudication, the meaning of truth always swims back and forth in objective facts and legal facts. The interpretation of truth in criminal justice of any country more or less includes these two meanings, but to different degrees. Objective facts are the essential core of truth, and legal facts are the manifestation of truth. The author believes that the meaning of truth in the obligation of pursuing truth refers to the pursuit of objective facts. In order to pursue objective truth as the goal, it is the duty of the prosecution organ to fully investigate the criminal facts and collect evidence, which is also the institutional goal of objective obligation. Although the investigation of objective facts can-not be fully realized in every case, the purpose of objective obligation has been completed in the process of finding out the truth. The fiftieth judges of criminal procedure law, "judicial personnel, prosecutors and investigators, must collect evidence in accordance with legal procedures to collect suspect or defendant's guilt or innocence and the seriousness of the crime", which is the legislative expression of the prosecutor's pursuit of real obligations.

The purposive obligation of prosecution, also known as the rational obligation of prosecution, refers to the obligation that prosecutors should be rational in the process of criminal prosecution, and properly exercise the discretion of prosecution in order to realize the principles of judicial justice and litigation economy after comprehensively considering the social legal interests, the circumstances of criminal cases and litigation efficiency. The purposive obligation of prosecution has two connotations. First of all, the prosecution of criminal acts by prosecutors should not be too fanatical and should be rational. Although the prosecutor is the prosecution organ, investigating the criminal responsibility of the suspect is the most fundamental task entrusted to him by the law. However, the prosecutor is not a "party" in the full sense. Prosecuting a crime is an important litigation duty of the prosecutor, but it is not its only litigation value. The identity of prosecuting on behalf of the state and the value of maintaining the legitimacy of prosecutions determine that prosecutors should not only "enthusiastically" crack down on crimes, but should take the "purpose" in line with the interests of national prosecutions and maintaining the legitimacy of prosecution procedures as their prosecution guide. Secondly, the realization of national prosecution interests not only lies in the punishment of criminals, but also the pursuit of prosecution efficiency and prosecution effect. Under the background of the increasing number of criminal cases, adjusting the limited judicial resources to realize the reasonable diversion of cases and reasonably allocating the judicial resources occupied by different cases are also the legitimate matters that prosecutors should consider when deciding whether to prosecute. This is the significance and legitimacy of giving prosecutors the right of prosecution discretion. The prosecutor's independent decision whether to bring a lawsuit, what crime to bring a lawsuit, whether to conduct plea bargaining, whether to apply summary procedure, whether to conduct discretionary non prosecution or conditional non prosecution, and whether criminal reconciliation can be carried out are the embodiment of the purposive obligation of prosecution.

Conflict and Realization of prosecutor's objective obligation

Analysis on the external conflict of prosecutor's objective obligation

Through the analysis of the purpose and essence of the objective obligation, it is not difficult to see that the objective obligation is a special obligation (duty) that is committed to balancing the huge gap between the state and individual citizens in the litigation and requires the prosecution organ to bear forcibly. It is not the

manufacturer of the unequal litigation status between the two parties. On the contrary, it exists to make up for this inequality. The premise of the existence of objective obligation is to recognize the substantive inequality of the subject status of the two parties. Although there is formal equal confrontation between prosecution and defense in common law countries, the practice of still exploring the "just responsibility" of prosecutors undoubtedly proves that this "inequality" can-not be resolved by the formal balance between prosecution and defense in the confrontation. It can be seen that the substantive inequality between the prosecution and the defense is generally recognized, and the objective obligation does not confirm or strengthen this substantive inequality. However, authoritarian countries do not have the "formal equality" between the prosecution and the defense. This lack of "formal equality" is the main reason why scholars attribute "aggravating the inequality between the prosecution and the defense" to objective obligations. At this time, the formal inequality between the prosecution and the defense comes from the difference of litigation status between the two sides, or from the detachment of the prosecution. So is the transcendence embodied by the prosecution in the lawsuit caused by objective obligations? The author believes that the answer is just the opposite. It is the transcendence of the prosecution that leads to the commitment of the objective obligations of the prosecution. The reason for this transcendence comes from the idea of "rule by law" of the authority state." As long as the ruler rules according to law, there will be no infringement of civil rights. As long as the ruler rules according to law, the people should accept his rule." [Chen Wei-Dong: The road to procedural justice (Volume I), Law Press, 2005 edition, page183.]although the ruler gradually evolved into a state organ, the relationship between "ruling and being ruled" still exists. Under such a relationship, state organs are in a detached position, and there can be no formal equality between them and individual citizens.

In essence, the requirements of objective obligations for prosecutors and their own attributes should be two different problems: the former is essentially the embodiment of the value and purpose of objective obligations in prosecutors. The latter mainly solves the positioning problem of the nature of prosecutors. However, because there is no final conclusion on whether the prosecutor belongs to (quasi) judicial officials in China, and the mainstream view in the academic circles defines the content essence of the objective obligation as the objective and fair judicial attribute and the theoretical positioning of "legal guardian", it is considered as the "basic condition" for the realization of the objective obligation based on "the confirmation of the judicial nature of the prosecutor and his status as a judicial organ".[Long Zong-Zhi: On the objective obligation of prosecutors, Law Press, 2014 edition, page150.] The author believes that the objective obligation endows the prosecutor with a special obligation, which lies in the realization of the legitimacy of the prosecution behavior by the prosecution organ in the process of prosecution, that is, the pursuit of truth and objectivity, the legitimacy of procedure and the realization of the value of optimizing the efficiency of prosecution, which has nothing to do with the attributes of prosecutors and judicial officials. Moreover, the implementation subject of objective obligation is the prosecution organ, which performs the prosecution function in the litigation. If the prosecution subject and the trial subject are collectively referred to as judicial officials, it does not seem to be in line with the legal significance of the principle of separation of prosecution and trial.

The author believes that discussing the relationship between the prosecution and the police at the level of objective obligation involves not only the structure of criminal procedure in China, but also the subject of objective obligation. Although as a conventional concept, the implementation subject of the prosecutor’s objective obligation seems to be the "prosecutor", the objective obligation refers to the specific responsibility unilaterally borne by the prosecution organ to balance the substantive differences between the two parties in order to

realize the legitimacy of the prosecution behavior in the process of national prosecution. Therefore, the author believes that the implementation subject of objective obligation should be the prosecution organ. However, due to the origin of objective obligations, Germany is a country with the integrated prosecution mode of "prosecutors as the prosecution subject and judicial police as the auxiliary organ", and most of the other civil law countries also adopt this investigation mode. In common law countries, the concept of criminal procedure is usually used in a narrow sense. In the trial stage, the prosecution is the prosecutor, and its case investigation is generally not included in the scope of litigation; Secondly, the investigation stage of common law countries usually adopts the free investigation method agreed by the parties, and is guaranteed by the judicial review system. The prosecution behavior in the investigation process does not involve the issue of legitimacy. Third, prosecutors enjoy great "criminal case investigation power and command investigation power" (mainly referring to the United States here).Therefore, whether the objective obligation of the civil law system or the just responsibility of the common law system, the subject is the prosecutor. However, if considering that China's criminal procedure includes the broad concept of investigation stage, the litigation structure of separation of prosecution and police, and the imperfect judicial review mechanism, the author believes that the implementation subjects of China's objective obligations should include prosecutors and criminal investigators. This obligation does not require the police to be neutral, but requires them to maintain the legitimacy of prosecution in the process of prosecution. In practice, the criminal investigators' obligation to pursue the truth of the case, the litigation care obligation to convey the suspect's reasonable litigation request and the procedural guarantee obligation to inform the suspect's litigation rights are the manifestations of undertaking objective obligations. However, in foreign countries, these obligations are generally exercised by prosecutors or judges. Although the procurator (organ) has the right to supervise and correct the improper litigation activities of investigators in China's criminal procedure, this power is only the embodiment of the procurator's supervisory function and does not belong to the content of objective obligations. Moreover, the content of the objective obligations of investigators can-not be completely replaced by the supervision of prosecutors (organs). If we insist on replacing the objective obligations of criminal investigators with the examination and supervision of prosecutors, we will only fall into the dilemma of "how to grasp the relationship between prosecutors and police to deal with the implementation of objective obligations".

Establishing objective obligations and procedural sanctions

As the legitimacy expectation and conceptual principle of the state prosecution behavior, the prosecutor's objective obligation needs not only the specific institutionalization of the content of the objective obligation, but also the responsibility of violating the objective obligation system if we want to change from the conceptual conception to the legal provisions on paper, and then to the operation and application in practice, and to be implemented in the application of law. Only with responsibility can obligations be fulfilled, and only with relief can rights be realized. The implementation of objective obligation system is inseparable from the establishment of procedural sanctions. Its importance lies in the following aspects. In terms of ensuring the prosecution behavior and procedural legitimacy, the objective obligation is the unilateral obligation borne by the prosecutor. It itself faces the inequality of the litigation rights and obligations of the two parties. In addition, for the value of investigating the crime, the objective obligation may sometimes hinder the realization of the value, and the implementation of the objective obligation is not the wish of the prosecution organ. Although from the historical context of the development of criminal procedure, constantly limiting the wanton prose-

cution behavior of prosecution organs and realizing the rationalization and legalization of prosecution are the trend of modern litigation progress and civilization, this process is undoubtedly extremely difficult. At present, the objective obligation still needs to rely on the force of law to ensure its realization, and the simple concept and ethics are obviously incompetent. The establishment of perfect procedural sanctions is a powerful weapon to realize the objective obligation. In terms of protecting the rights of the accused, the fundamental goal of standardizing the legitimacy of prosecution behavior is to make the state behavior under the control of the track of legal procedure, so that it does not have the risk of wanton infringement of civil rights, in order to realize the rule of law. The violation of litigation procedure and the non-performance of litigation obligations by the state prosecution organ is also a violation of citizens' litigation rights in essence. Only by giving citizens corresponding relief measures can we effectively protect citizens' litigation rights. In this sense, procedural sanctions are not only a punitive measure against the prosecution authorities for violating the litigation system, but also a relief way to protect citizens' right to due process.

As for how to establish procedural sanctions of objective obligations, the author believes that this is a systematic and huge project. The procedural sanctions of objective obligations should be considered in the organic whole of the construction of procedural sanctions system in China. Chinese scholars Professor Chen Rui-Hua and Professor Wang Min-Yuan have done in-depth and detailed research and Discussion on this. Many scholars have also introduced and studied the theory of invalidity of litigation acts in civil law system, and the author will not repeat them one by one.[Chen Rui-Hua: Between problem and Doctrine -- A Study on the basic problems of criminal procedure, China Renmin University Press, 2003 edition, page 94.]The author believes that as far as China's litigation system is concerned, the procedural sanctions of objective obligations are mainly reflected in the exclusion system of illegal evidence and the system of revoking the original judgment and sending it back for retrial in the second instance. The exclusionary rule of illegal evidence should exclude verbal evidence collected in violation of objective and true obligations such as extorting confessions by torture and physical evidence collected in serious violation of procedural guarantee obligations. When there are serious procedural guarantee obligations in violation of objective obligations in the first instance litigation, such as the application error of summary procedure, failure to guarantee the defendant who meets the legal conditions to obtain legal aid, violation of the avoidance system, the court of second instance shall impose procedural sanctions to revoke the litigation effect of the judgment of first instance. From the legislative level, although the procedural sanctions of objective obligations in China can be said to have begun to take shape, it goes without saying that the scope of application of procedural sanctions of objective obligations is still too narrow, and the procedural contents of many objective obligations are still not included in the procedural sanctions. However, the author believes that with the deepening of judicial reform and the deepening of the research on the objective obligation system, the construction of the procedural sanctions system for the objective obligation will become more and more perfect, and the objective obligation will be realized more comprehensively on this basis.

Improve the judicial review mechanism

Prosecution itself represents a value orientation and attitude in litigation, which is an objective obligation. No matter how much emphasis is placed on fairness and legitimacy, it can-not be reversed, while the judicial review system based on the neutrality of judicial power and the relief of litigation rights can correct the de-

viation in the legitimacy of prosecution. The principle of judicial review is called writ principle in common law countries and judge reservation principle in civil law countries. On the theoretical basis of the principle of separation of powers and checks and balances of powers, judicial power has become a neutral power as a third-party supervision between the state and citizens to ensure the legitimate operation of administrative power, and gives neutral supervision and right relief to the administrative acts of the state in the exercise of public power to interfere with citizens' personal and property safety. As a neutral judge of the case entity and litigation procedure, the judge's review of the litigation behavior of the prosecution organ naturally has more formal legitimacy and substantive fairness than the "self-discipline restraint mechanism" of objective obligation. Even to some extent, the judicial review system and objective obligation have the same litigation value, but the subjects and methods of exercise are different. At the same time, "not all prosecutors are fair, so we always need enthusiastic defense lawyers to supervise prosecutors". [See Chen Rui-Hua: Between problems and doctrine - A Study on the basic problems of criminal procedure, China Renmin University Press, 2003edition, pp.93-158; Wang Min-Yuan: On the procedural consequences of violating criminal procedure, Chinese law Press,1994 edition, page3; Stefani: Chinese translation of the essence of French Criminal Procedure Law (Part 2) , China University of political science and Law Press, 1998 edition, page 660.]The hearing procedure in the judicial review system can also provide suspects or lawyers with procedural rights such as hearing participation and expressing opinions. The appeal of procedural judgment constitutes a relief way for the rights of suspects and lawyers. Of course, due to the neutrality and passivity of judicial power and the limitation of judges' functions, the judicial review system can-not completely replace the role of objective obligations. Only when they complement each other can they achieve the supervision and control of national prosecution behavior, so as to realize the legalization of prosecution.

Conclusion

Admittedly, justice is the value goal pursued by prosecutors' objective obligations, but this does not mean that the essence of objective obligations is justice itself. The objective obligation of prosecutors should be the bottom line and foundation of Prosecutors' professional ethics and it is also the manifestation of the externalization of Prosecutors' professional ethics into legal responsibility. Separating the concept of prosecutor's objective obligation from the professional concept of prosecutor can not only highlight the legal attribute of prosecutor's objective obligation, but also conducive to the implementation of objective obligation in practice. Only by clarifying the theoretical orientation and system content of the prosecutor's objective obligation, and establishing the procedural sanctions and legal responsibility for violating the objective obligation, can the prosecutor's objective obligation be truly implemented.

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