

Discretionary Non-Prosecution under Procuratorial Integration: Practice and Institutional Responses

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Abstract: *Procuratorial integration has both administrative and judicial dimensions. Its administrative dimension is characterized by command, unity, and initiative, whereas its judicial dimension is marked by independence, direct personal engagement, and passivity. In judicial practice, the discretionary power not to prosecute has long failed to perform its intended function, and two tensions arise between that power and the requirements of procuratorial integration: first, the conflict between the judicialized independent exercise of authority and the administrative demand for the unified deployment of procuratorial power; and second, the contradiction between the requirement that authority be exercised through direct personal engagement and the command-based operation of procuratorial power. The prosecutorial system should therefore be improved in two respects: by safeguarding prosecutors' independent exercise of the discretionary power not to prosecute, and by appropriately limiting administrative commands within the procuratorial system.*

Keywords: Procuratorial integration; Judicialization of procuratorial power; Administrativeization of procuratorial power; Prosecutorial independence; Discretionary non-prosecution.

1. INTRODUCTION

In July 2024, the Supreme People's Procuratorate formally issued the *Several Opinions on the Comprehensive and Accurate Implementation of the Judicial Responsibility System by the People's Procuratorates* (hereinafter the *Opinions*). Building on the 2015 *Several Opinions on Improving the Judicial Responsibility System of the People's Procuratorates*, the document offers systematic deepening and refinement. Its core purpose is to further improve the operating mechanism of procuratorial power by clarifying the boundaries of authority and responsibility and by strengthening the correspondence between the two, thereby constructing a system for the exercise of procuratorial power oriented toward fairness, regularity, and efficiency, with integrity as an intrinsic requirement. The series of normative documents on reforming the judicial responsibility system all seek to highlight the judicial character of procuratorial authority: an independent institutional position, independent authority, and responsibility borne by the decision-maker. The prosecutor handling a case should exercise authority independently, personally engage with the case, and act in a procedurally passive capacity. Procuratorial power, however, is not only judicial in character; it also bears an administrative coloration, namely "procuratorial integration," a feature widely recognized as inherent in procuratorial power in many countries. Procuratorial integration is the modern civil-law tradition's principled summary of the internal organization and functional operation of the procuratorial system. In essence, it means that, within a unified constitutional framework, the exercise of procuratorial power must maintain overall consistency; procuratorial organs at all levels are organized according to the logic of an orderly hierarchical administrative structure, and prosecutors at different levels form a close relationship of "superiors commanding subordinates" and "leadership and being led." [1] In countries and regions that adopt procuratorial integration, the model is generally marked by a "hierarchical structure" and the organizational principle of "superior command and subordinate obedience": higher-level procuratorial organs have direct powers of guidance and supervision over lower-level procuratorial organs, and chief prosecutors have such powers over prosecutors' case-handling work, as well as powers to withdraw or transfer authority, while lower-level procuratorial organs and prosecutors owe duties of obedience and reporting [2]. All of these features reflect the administrative character of the operation of procuratorial power: command, unity, and initiative.

The relationship between the independence of prosecutors' authority and procuratorial integration is a foundational theoretical issue in the procuratorial system and has long attracted scholarly attention. The power of public prosecution is a major component of procuratorial power, and within it the discretion not to prosecute has always been a key criterion for assessing whether prosecutors can independently exercise their case-handling authority. Since the founding of the People's Republic of China, however, the non-prosecution rate in criminal cases has remained low. It has increased only in recent years with the deeper implementation of the criminal policy of

tempering justice with mercy. In practice, however, cases in which the prosecutor directly handling the matter independently decides not to prosecute remain exceedingly rare, and the exercise of non-prosecution discretion is subject to multiple constraints. Accordingly, taking the theory of procuratorial integration as the point of departure, this article systematically analyzes the conflicts between the exercise of non-prosecution discretion and the requirements of procuratorial duty, as well as their causes. Drawing on comparative legislative experience, it then attempts to construct a normative path for the application of discretionary non-prosecution under China's system of procuratorial integration.

2. THE PRACTICAL APPLICATION OF DISCRETIONARY NON-PROSECUTION

In 2018, the procuratorial organs' non-prosecution rate was 7.7 percent, and the rate of discretionary non-prosecution was 5.8 percent [3]. In 2020, the overall non-prosecution rate was 13.9 percent, and the rate of discretionary non-prosecution was 11.6 percent [4]. In 2023, the overall non-prosecution rate reached 25.5 percent [5]. Viewed solely in longitudinal terms, the overall and discretionary non-prosecution rates of China's procuratorial organs appear to have increased markedly. Yet a closer analysis of case-handling data shows that the deeper figures behind this significant increase are not as encouraging as they may seem: the proportion of discretionary non-prosecution remains relatively low, with the 2023 rate standing at only 21.8 percent [6]. Given China's large and continually expanding caseload, that increase is plainly modest. Moreover, comparison with other countries or regions further highlights the extremely low non-prosecution rate in mainland China. In Japan, for example, the non-prosecution rate has long remained above 40 percent and reached 50.4 percent in 2015. Germany's rate is somewhat lower, but it has also remained above 20 percent over time [7]. The core reason for the higher non-prosecution rates in these countries and regions is that prosecutors retain a relatively high degree of independence in handling cases. They do not prosecute every case simply because the elements of an offence are met. Instead, after considering the circumstances of the case and the application of law, they make active use of the discretion vested in them to issue non-prosecution decisions where the statutory requirements are satisfied.

In June 2024 and July 2025, the author conducted field interviews at basic-level procuratorates in City W and City S, respectively [8]. The research found that in both places the number of discretionary non-prosecution decisions in cases involving crimes by natural persons accounted for only a small proportion of the total number of cases handled by prosecutors. The application of non-prosecution discretion was far from ideal: the rate of discretionary non-prosecution was generally low and increased only slowly. These findings show that prosecutors handling cases remain conservative in applying discretionary non-prosecution and generally prosecute cases that could either be prosecuted or not prosecuted. After tracing the underlying causes and interviewing basic-level prosecutors, the author identifies three principal concerns that affect prosecutors' exercise of non-prosecution discretion.

2.1 Case-Handling Mentality: Reluctance to Apply the Power

Within China's criminal procedure, the procuratorial organ is the only judicial organ that participates in the investigation, prosecution, and trial stages. As a guardian of legal justice, it bears both the duty to prosecute offenders and the responsibility to supervise legality. These two missions should proceed in tandem. In China's judicial practice, however, influenced by ideas such as "strike hard," the work of procuratorial organs has long emphasized crime control while neglecting the performance of supervisory functions and the protection of the rights and interests of persons subject to prosecution. From the perspective of procuratorial integration, on the one hand, within the procuratorial system the crime-control focus of higher-level procuratorial organs directly affects, and may even alter, the case-handling methods of lower-level procuratorial organs. On the other hand, within a procuratorial organ, the chief prosecutor may, in accordance with the requirements of higher-level organs, order subordinate prosecutors to align their procedural conduct with the institutional priority of combating crime. This makes prosecutors reluctant to exercise non-prosecution discretion when handling cases. In addition, the 1996 amendment to the Criminal Procedure Law abolished the exemption-from-prosecution system, and that legislative change caused procuratorial organs to approach the exercise of non-prosecution discretion with caution. Before the amendment, whether procuratorial organs should retain discretion not to prosecute was widely debated in both academic and practical circles, and the controversy even threatened the institutional position of the procuratorial organs themselves. Although the legislature, after introducing a Chinese version of the presumption of innocence, transformed the exemption-from-prosecution system into the system of discretionary non-prosecution, this change continued to have a profound influence on procuratorial organs. It made them especially cautious and conservative in exercising non-prosecution discretion thereafter, even to the point of avoiding its use whenever possible, lest they repeat the fate of the abolished exemption-from-prosecution system [9].

2.2 Assessment Standards: Restrictive Application

At present, some localities still display a tendency to "advance judicial work through assessment indicators and evaluate case-handling quality through assessment data." The non-arrest rate and the non-prosecution rate have long served as important indicators for measuring case-handling quality. Prosecutors interviewed by the author reported that, in some regions, the assessment of case-handling quality in procuratorates focuses on reviewing non-prosecution cases, which leaves prosecutors with a strong sense that assessment results weigh heavily on them. Objective assessment criteria thus compel prosecutors to use non-prosecution cautiously and even to prosecute wherever prosecution is possible. In current investigation-supervision work, moreover, non-prosecution after arrest is often treated as direct evidence of poor quality in the public security organ's arrest request and the procuratorial organ's arrest approval. This directly affects the operational evaluation and performance assessment of both organs. Under the traditional model of separating arrest approval from prosecution, and in light of operational connections among basic-level departments and integrated performance-assessment considerations, procuratorial organs generally proceed to prosecute cases in which they have already approved arrest, even where subsequent investigation and interrogation make clear that the conditions for non-prosecution may be satisfied. By doing so, they transfer case-handling and performance-assessment pressure to the courts. Given the extremely low acquittal rate in China, once prosecutors bring a public prosecution, they almost need not bear further responsibility. This directly contributes to the low rate at which prosecutors exercise non-prosecution discretion. Under the current integrated arrest-prosecution model, the prosecutor or case-handling team that approved arrest is often the same prosecutor or team that approves prosecution. In relation to non-prosecution discretion, the existence of assessment standards makes it objectively difficult to expect prosecutors to negate their own earlier case-handling conclusions. These mechanical performance-assessment standards therefore have obvious defects. Strict control over the non-prosecution rate and an imbalanced pursuit of the prosecution rate hinder the full exercise of authority by prosecutors handling cases and trap a power that should operate as a discretionary mechanism within constraints that make it difficult to apply.

2.3 Case-Handling Procedure: Procedural Burdens

Before reform of the judicial responsibility system, even where a case might warrant non-prosecution, once the procedure moved to the examination-for-prosecution stage, it was rare in practice for the prosecutor handling the case, or even the chief prosecutor, to make the non-prosecution decision directly. More often, the decision was made by the procuratorial committee. If the decision was one of statutory non-prosecution, the handling prosecutor had to report and file the matter level by level. If the decision was one of discretionary non-prosecution, the reporting and approval procedures were even more complicated. The legislature designed these complex reporting and approval processes primarily out of concern over the risk of abuse of the power not to prosecute. It was therefore considered necessary to supervise case-handlers through separation of powers and to diffuse case-handling responsibility. In some localities, moreover, a non-prosecution decision ultimately had to be submitted to people's supervisors for approval by vote [10].

Although the approval procedure for non-prosecution has now been simplified to some extent, relevant cases after the reform must still be submitted to the chief prosecutor for decision. Even though the chief prosecutor has acquired a measure of decision-making authority, under the traditional thinking of "transferring case-handling responsibility risk" and "superior command, subordinate obedience, and vertical integration," chief prosecutors often choose to submit cases reported by prosecutors to the procuratorial committee for collective deliberation rather than directly issuing a non-prosecution decision. This shows that, although the approval chain is now simpler than before, the institutional design still reflects a strong orientation toward caution: while granting space for non-prosecution discretion, it continues to treat prevention of abuse of power and reinforcement of internal supervision as important considerations. Compared with directly entering the public prosecution process, non-prosecution commonly entails more stringent requirements in terms of written formalities, levels of review, and allocation of responsibility. Because prosecutors handling cases lack an institutional environment that permits sufficiently autonomous exercise of discretion, and because they face the practical pressure of a persistently heavy caseload, they are more likely to develop a prosecution-oriented case-handling strategy. Strict procedural control can certainly enhance the legality and acceptability of non-prosecution decisions and, to some extent, maintain uniform standards within procuratorial organs. Its side effects, however, are also evident: layer-by-layer review raises case-handling costs, increases the burden on case-handlers, and allows their nominally independent judgment to be absorbed by organizational approval. From the perspective of incentives, choosing non-prosecution may require additional explanation, reporting, and justification, and may also affect performance assessment, quality evaluation, and even retrospective accountability. After weighing benefits and risks,

prosecutors handling cases generally tend to prosecute in order to avoid the procedural costs and professional risks generated by applying non-prosecution. For example, in an empirical study on the application of prosecutorial discretion not to prosecute in a certain province, one scholar found that 64.5 percent of respondents identified "fear of trouble" as the main reason they were unwilling to apply the discretionary non-prosecution system [11].

3. CAUSES OF THE PREDICAMENT IN APPLYING DISCRETIONARY NON-PROSECUTION

3.1 The Contradiction between Judicialized and Administrative Exercise of Authority

"Procuratorial integration" originated and developed in civil-law countries. It requires procuratorial organs at all levels to form a unified command structure: lower-level procuratorial organs obey the instructions of higher-level procuratorial organs, and lower-level prosecutors obey the orders of higher-level prosecutors. Yet civil-law countries, while emphasizing procuratorial integration, have not ignored the independence of prosecutors in performing duties in individual cases. Germany provides an example. The German Courts Constitution Act expressly provides that, in performing prosecutorial duties, prosecutors may by law act as agents of the chief prosecutor and exercise relevant authority in the chief prosecutor's name, without obtaining separate authorization for each specific matter, such as the review, signing, or issuance of documents. At the same time, German law imposes strict limits on prosecutorial instructions. The German Code of Criminal Procedure further provides that prosecutorial instructions may apply only to situations such as non-prosecution of minor offences or cases in which prosecution is unnecessary, and that in individual cases their effect is mainly confined to internal disciplinary constraints and must be issued in writing. Through these legislative arrangements, Germany not only clarifies prosecutors' judicialized functions and statutory agency mechanism, but also effectively prevents administrative interference by higher-level prosecutors and procuratorial organs in individual cases by strictly defining the power to issue prosecutorial instructions. In this way, it protects frontline prosecutors' independent discretion to decide not to prosecute while maintaining balance and coordination in the overall performance of procuratorial duties.

Within the framework of procuratorial integration, there is a persistent tension between prosecutors' independent exercise of authority, including non-prosecution discretion, and the requirement of "superior command and subordinate obedience." This tension has not been fundamentally resolved since reform of the judicial responsibility system began. A review of multiple normative instruments on the judicial responsibility system makes visible the institutional designer's balancing and wavering between unified power and independent responsibility. On the one hand, the norms emphasize that prosecutors exercise authority independently within the scope of their authorization and independently bear responsibility. On the other hand, they preserve the power of higher-level prosecutors to check and review lower-level decisions, seeking to strike a balance between unified command and the autonomous discretion of the person handling the case. In practice, however, this compromise often fails to eliminate the conflict.

More specifically, the Opinions set out in their general provisions and related clauses the basic principles for implementing the judicial responsibility system in procuratorial organs, the forms of case-handling organization, the operating mechanism, and the catalogue of powers. They seek to realize the principle that "whoever handles the case bears responsibility, and whoever makes the decision bears responsibility." Within the scope of their own authority, prosecutors have the power to decide case-handling matters. Under Article 22 of the Opinions, however, the chief prosecutor is at the same time granted the power to review the case-handling decisions of the prosecutor handling the case. In addition, Article 6, paragraph 2, of the Guiding Opinions on Improving the Prosecutors' Power List (hereinafter the Power List Opinions) provides that case-handling opinions formed within the scope of responsibility shall, in principle, no longer be approved one by one by the chief prosecutor or the deputy chief prosecutor in charge, but that cases may be reviewed and supervised in accordance with law.

The review power was introduced to clarify and divide the decision-making authority and responsibility of the chief prosecutor, the procuratorial committee, and individual prosecutors in case-handling matters, thereby avoiding a situation in which all three simultaneously bear responsibility for a specific case. In procuratorial practice, however, the "review power" has not simplified the handling process for discretionary non-prosecution cases. On the contrary, forms of "invisible approval power" and "request-for-instruction power" resembling the approval power described above frequently appear. "Invisible approval" and the "request-for-instruction power" refer to situations in which the prosecutor handling a case, before exercising authority or making a decision, requests instructions from a superior in writing or orally and then makes the decision in accordance with the leader's instructions and requirements. More seriously, department heads or deputy chief prosecutors in charge

may directly exercise de facto discretion over a case through "oral suggestions" while bearing no judicial responsibility [12]. It follows that prosecutors' inability to smoothly exercise powers such as non-prosecution discretion is attributable to two related factors. On the one hand, current reform of the judicial responsibility system seeks to ensure that prosecutors handling cases make independent case decisions and exercise authority independently. On the other hand, it also emphasizes the administrative features of vertical integration and superior command within procuratorial organs, strengthens superior leadership and supervision, and reflects the habit of higher-level prosecutors using administrative and command-based methods to maintain the unified and effective exercise of procuratorial power. As a result, basic-level prosecutors find it difficult to free case-handling from the will of higher-level prosecutors.

3.2 The Contradiction between Direct Personal Engagement and Command-Based Decision-Making

Direct personal engagement by the prosecutor handling a case is a basic requirement in the operation of procuratorial power. Its purpose is to underscore and strengthen the position of the case-handling subject and to ensure that responsibility can be assigned to specific persons. Such engagement means primarily that the person directly handling a case, at stages such as review of arrest and examination for prosecution, should personally review the evidentiary materials, listen to the opinions of the parties and defense counsel, form independent judgments and factual convictions on the basis of objective evidence, and then make decisions such as whether to approve arrest or whether to initiate a public prosecution. Article 22 of the Opinions provides for the power of prosecutorial instruction: if disagreement arises during case-handling, the prosecutor handling the case must unconditionally obey and strictly implement the chief prosecutor's instruction. This approach, however, leads to a relative separation between decision-making power and implementation power in the prosecutor handling the case. Superior control mechanisms such as review, alteration, or revocation substantively reflect the command-based character of the operation of procuratorial power. Although the specific case-handler may explain reasons and submit opinions, that person usually does not control the final decision, and dissenting views may be rejected or returned in the internal process. Analysis of Article 22 of the Opinions and Article 7 of the Guiding Opinions on Improving the Prosecutors' Power List shows the following [13]. On the one hand, the law imposes a requirement of direct personal engagement on the public prosecution organ when examining cases for prosecution, requiring prosecutors to truly read, truly listen, and truly experience the case, and on that basis to form a legally grounded inner conviction so that the handling prosecutor can make an independent judgment. On the other hand, in order to maintain the vertical unity of procuratorial power, the law also requires the handling prosecutor, in exercising authority, to obey instructions such as review, alteration, or revocation by the chief prosecutor or higher-level procuratorial organ.

It can therefore be seen that the power of prosecutorial instruction, with its rigid administrative character, can in practice maintain overall consistency of action within procuratorial organs at the level of organizational governance and ensure the transmission of internal commands and the uniformity of case-handling standards. Its negative effects, however, are equally apparent. When the will of a superior becomes the decisive basis for resolving an individual case, the professional judgment formed by the direct case-handler through personal review may be compressed, especially in relation to the autonomous discretion needed for non-prosecution decisions. Over time, the judicialized exercise of procuratorial power can easily become a formality, and the principle of independent responsibility becomes difficult to realize fully. In individual cases, the process by which decisions are formed may also depart from the factual contact, evidentiary evaluation, and attribution of responsibility required by direct personal engagement, thereby making it difficult to give full effect to that requirement at the judicial level and causing accountability to become hollow.

4. RESPONSES TO THE PREDICAMENT IN APPLYING DISCRETIONARY NON-PROSECUTION

From the perspective of criminal procedure theory, the composite character and institutional positioning of procuratorial power are determined by modern theory on the separation between prosecution and adjudication and by prosecutors' objective duty. Both value attributes are necessary. The core of resolving the conflict between them, in the author's view, is to fully develop the judicialized feature of individual prosecutors' independence in handling cases while appropriately limiting the administrative feature of superior command within the procuratorial system, thereby promoting balance and coordination in the exercise of prosecutorial powers such as non-prosecution discretion.

4.1 Safeguarding the Independence of the Exercise of Non-Prosecution Discretion

4.1.1 Clarifying Prosecutors' Status as Case-Handling Subjects and the Scope of Their Authority

Under the current normative structure, Article 29 of the Organic Law of the People's Procuratorates, as amended in 2018, allocates case-handling authority around the chief-prosecutor responsibility system. Ordinary prosecutors participate in the handling of specific cases, but their work is placed under the unified leadership of the chief prosecutor. For important matters, the final judgment remains with the chief prosecutor, and certain powers enter the hands of prosecutors only through delegation or authorization, including procedural powers such as the signing and issuance of legal documents. Thus, the handling of individual cases within China's procuratorial organs does not proceed from prosecutors' inherent authority as a given. Rather, under the principle of procuratorial integration, it takes the operational form of "chief-prosecutor control and authorization of the case-handler." If prosecutors' decision-making capacity depends primarily on grants of authority from superiors, their status as case-handling subjects can hardly fully correspond to the independent performance of duties contemplated by Article 6 of the Prosecutors Law [14]. More importantly, existing rules do not provide sufficiently detailed standards for when the scope of authorization may be expanded or contracted, or who is to make that judgment. Nor do they establish layered management for powers of different character, such as changing an arrest conclusion, issuing a non-prosecution decision, or initiating or terminating procedural supervision. Accordingly, when relevant organizational legislation is improved in the future, it will be necessary to affirm prosecutors as relatively independent subjects of case-handling responsibility and, at the same time, to clearly demarcate the boundary between ordinary case matters and major matters, so as to prevent the authorization mechanism from degenerating into a tool by which superiors arbitrarily control individual cases.

Within the framework of integrated procuratorial performance, prosecutors' independence in performing duties in individual cases should be fully respected. For ordinary matters, such as discretionary non-prosecution in minor-offence cases, prosecutors should be fully authorized to exercise authority independently. After making the decision, they should merely report and file the case-handling matter, without waiting for review by the chief prosecutor. For major matters or matters that must be reported, the prosecutor's decision-making authority should likewise be respected: the prosecutor should first make an independent decision, and then report it to the chief prosecutor for filing and review in accordance with the rules. If the chief prosecutor disagrees with the prosecutor's opinion, the preferred course should be to instruct another prosecutor to review the decision already made, and the instructed prosecutor should independently form a judgment and decision. Only if the chief prosecutor still disagrees with the review decision of that other prosecutor should the chief prosecutor directly alter the decision of the original handling prosecutor. This design, while preserving the power of prosecutorial instruction, fully respects the independence of the handling prosecutor's case-handling authority and keeps authority and responsibility aligned.

4.1.2 Renewing the Case-Handling Mindset Toward Discretionary Non-Prosecution

For a long time, when examining cases for prosecution, prosecutors have tended to "emphasize prosecution and neglect protection" in relation to criminal suspects. A case-handling mentality has existed in which "if a crime is established, arrest follows; if guilt exists, prosecution is required; and detention continues to the end." To avoid mistakes and trouble, cases that could either be prosecuted or not prosecuted are prosecuted across the board. Although many minor-offence cases sit at the boundary between prosecution and non-prosecution, prosecutors, because of habitual thinking, often dare not and do not wish to apply the discretionary non-prosecution system. In practice, as China's criminal offence structure has already changed, the influence of non-prosecution-rate assessment standards has led prosecutors to emphasize prosecution one-sidedly and to neglect non-prosecution. The resulting effect is often counterproductive and is not conducive to the reintegration into society of the large number of persons prosecuted for minor offences. One scholar has compiled public judicial data from 2014 to 2018. During those five years, among the cases prosecuted by procuratorial organs in court, 49 percent, 48.8 percent, 49.7 percent, 44.6 percent, and 44.5 percent respectively resulted each year in suspended sentences, public surveillance, short-term detention, standalone fines, other light punishments, or exemption from criminal punishment [15]. These cases involving light punishment or even exemption from punishment cannot all be treated alike. Yet if prosecutors, before these cases enter the courts and at the examination-for-prosecution stage, could avoid performing their duties according to an ingrained prosecution-oriented mentality and instead fully consider the possibility of applying non-prosecution discretion in individual cases, daring to apply discretionary non-prosecution to some of them, the case-handling effect might be better. It would also reduce pressure on both procuratorial organs and courts, allow the parties to escape the burden of litigation sooner, and avoid the negative criminogenic influence of other offenders in detention centers and prisons. Prosecutors should also consider the series of problems faced by prosecuted persons when returning to society after punishment. As the trend toward

legislation of minor offences expands, the label of criminal conviction becomes too heavy for parties involved in minor offences and may impede their reintegration into society. For victims, it often has little practical significance, while complex proceedings delay compensation. For the state, it consumes substantial adjudicative resources. Accordingly, for first offenders, occasional offenders, and minor offences arising from everyday disputes, discretionary non-prosecution should be applied proactively where appropriate.

4.1.3 Streamlining Administrative Review Procedures within Procuratorial Organs

As noted above, the existing discretionary non-prosecution procedure operates through a rigid model of layer-by-layer review. It requires heavy work and involves cumbersome procedures, and prosecutors often are unwilling to apply it in handling cases. This has also meant that chief prosecutors and procuratorial committees in fact dominate the non-prosecution procedure in criminal proceedings. To allow prosecutors to play their proper role in the discretionary non-prosecution procedure, it is necessary to weaken the administrative coloration of prosecutors' exercise of authority, reduce the procedural obstacles to non-prosecution decisions, expand prosecutors' decision-making power over non-prosecution in minor criminal cases, and lower the difficulty and workload involved in exercising the power not to prosecute. Specifically, collective decision-making and control should be used only for the small number of cases that are factually complex or do not conform to the usual standards for applying common offences, but in which discretionary non-prosecution is nevertheless necessary. In such cases, the collective wisdom made possible by vertical integration within the procuratorial system may be used by convening a joint prosecutors' meeting for discussion and then submitting the matter to the chief prosecutor for decision. By contrast, in the vast majority of minor criminal cases with clear facts, reliable and sufficient evidence, simple circumstances, and no controversy, there is no need for layer-by-layer review. The review procedure for discretionary non-prosecution and the requirements for document production should be appropriately simplified. For example, the power to decide non-prosecution in these minor and petty criminal cases may be directly delegated downward, so that prosecutors independently make the decision and file it, without waiting for the result of the chief prosecutor's review. Differentiating cases according to their circumstances and diverting complex and simple cases into different procedures will help promote the scientific and effective exercise of prosecutors' non-prosecution discretion.

In addition, department heads or responsible leaders may conduct necessary supervision over the application of non-prosecution discretion, but the legitimacy of that supervision should not derive from hierarchical status itself. It should instead rest on the need to prevent abuse of discretion, ensure uniform application of law, and maintain case quality. In other words, supervision should be exceptional, procedural, and explainable. Intervention should occur only where there are obvious doubts about fact-finding, evidence evaluation, legal application, or the public interest, and it should follow predetermined procedures. After intervention, reasons should be recorded, records should be preserved, and the prosecutor handling the case should be allowed to express dissenting views. If all proposed non-prosecution cases are subjected to substantive review or even redetermination without distinguishing case type and risk level, supervision will be transformed into substitute discretion, thereby weakening the individualized judgment and prosecutorial responsibility required by the non-prosecution system.

4.2 Appropriately Limiting Administrative Commands

4.2.1 Regulating the Exercise of the Power of Prosecutorial Instruction

"The key to drawing the boundary between procuratorial integration and prosecutors' independent exercise of authority lies in reasonably regulating the application of the power of instruction, transfer of duties, and substitution of officials." [16] Judicial practice readily shows that, in the current operating procedure of China's procuratorial power, integration, administration, and command have been fully implemented, whereas independence remains insufficient. It should be made clear that, because procuratorial organs maintain a high degree of independence from administrative organs, investigative organs, and adjudicative organs, the insufficiency of independence just mentioned specifically refers to the insufficient independence of prosecutors in exercising authority within the procuratorial system. The power of prosecutorial instruction is the core mechanism by which procuratorial organs realize integrated performance under superior command and subordinate obedience. To balance the application of that power with the protection of prosecutors' independent exercise of authority, the statutory principles, procedural rules, and accountability mechanisms governing prosecutorial instructions should be further clarified. Litigation-related matters such as review of arrest, prosecution, and non-prosecution should in principle be handled and decided directly by prosecutors. Even where the decision does not meet the chief prosecutor's expectations, or where the lower-level prosecutor has violated statutory procedures or conditions in

handling the case, the chief prosecutor should in principle not directly order alteration or revocation of the decision. The chief prosecutor should first recommend that the handling prosecutor conduct a renewed review. If the prosecutor handling the case adheres to the original decision, the chief prosecutor may instruct another prosecutor to handle the case. If the chief prosecutor still objects to the new decision, the chief prosecutor may withdraw the handling authority and make the decision directly. Before doing so, however, the chief prosecutor must personally conduct procedures such as reviewing the facts of the case, examining the evidence, and questioning the parties, so as to comply with the requirements of direct personal engagement and independence in the exercise of procuratorial authority.

4.2.2 Reforming Administrative Assessment Indicators

To enable non-prosecution discretion to function fully, prosecutors themselves must promptly abandon the traditional case-handling mentality of "prosecution whenever guilt exists," and procuratorial organs must also adjust rigid assessment indicators accordingly. Because individual cases differ substantially, predetermined administrative assessment indicators may diverge from the value of fair justice. It is particularly unreasonable to impose rigid non-prosecution-rate assessment standards on basic-level procuratorial organs. Administrative assessment indicators require prosecutors, in handling cases, not only to make value judgments and choices about facts and legal application, but also to consider the annual prosecution-rate and non-prosecution-rate targets of their department and institution. This contaminates the prosecutor's internal standard for prosecution and may easily cause de facto judicial unfairness. The author therefore argues that unscientific assessment indicators should be abolished. Performance assessment should not serve as the sole standard for evaluating procuratorial work. Artificially high or low requirements should not be imposed on the non-prosecution rate, and public security organs and procuratorial organs must not be given the message that non-prosecution is equivalent to ineffective case-handling.

In addition, both public security organs and procuratorial organs should change the practice of treating "non-prosecution after arrest" as a negative assessment indicator. Although the procuratorial organ's requirements for arrest and for examination for prosecution are similar in certain respects, arrest is a coercive measure used at an early stage of case investigation to control the criminal suspect and prevent destruction of evidence or reoffending. It therefore has stage-specific limitations. Arrest has its own conditions of application and remains clearly different from the conditions under which a case is ultimately brought as a public prosecution. The necessity of arrest may change as the case develops, and even for criminal suspects or defendants already in custody, the coercive measure already adopted may be changed. Review and approval of arrest and review and approval of prosecution are two procedures and two stages. The necessity of arrest is not the same as the necessity of prosecution. It therefore cannot be assumed, merely because the public security organ and the procuratorial organ have already arrested and detained the criminal suspect at an early stage, that the procuratorial organ must prosecute the suspect. Still less should whether a case is prosecuted be treated as an assessment indicator for evaluating the quality of arrest or prosecution. In reviewing arrest and prosecution, procuratorial organs should take the facts of the case as the basis and the law as the criterion; they must not proceed from a single, rigid administrative assessment standard. Only in this way can procuratorial organs and prosecutors be properly guided in terms of responsibility, so that in handling cases they comprehensively consider the basic facts and the application of law, fully exercise prosecutors' free evaluation of evidence, and remove constraints on the reasonable application of the power not to prosecute.

5. CONCLUSION

Under procuratorial integration, the exercise of non-prosecution discretion faces a tension between judicial independence and administrative command. Through analysis of institutional design, practical data, and interviews at basic-level procuratorates, this article shows that, in minor cases or cases that could either be prosecuted or not prosecuted, prosecutors handling cases cannot fully exercise their discretion if they lack clear protection for independent authority and simplified procedural support. This phenomenon not only affects justice in individual cases, but also limits the realization of the judicial character of procuratorial power. Future reform should therefore center on safeguarding prosecutors' independent case-handling while, where necessary, regulating the exercise of the power of instruction and reforming assessment mechanisms, so as to achieve a balance in which authority and responsibility are unified and duties are clearly defined. The coordination between procuratorial integration and discretion is not merely a theoretical issue; it is also a key institutional and practical problem urgently requiring resolution in judicial practice. Taking this issue as the point of departure may further advance the modernization of China's criminal justice system.

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- [4] Work Report of the Supreme People's Procuratorate (Fourth Session of the Thirteenth National People's Congress), Supreme People's Procuratorate website, https://www.spp.gov.cn/spp/gzbg/202103/t20210315_512731.shtml.
- [5] Work Report of the Supreme People's Procuratorate (First Session of the Fourteenth National People's Congress), Supreme People's Procuratorate website, https://www.spp.gov.cn/spp/gzbg/202303/t20230317_608767.shtml.
- [6] Main Case-Handling Data of Procuratorial Organs Nationwide in 2023, Supreme People's Procuratorate website, https://www.spp.gov.cn/xwfbh/wsfbt/202403/t20240310_648482.shtml#1. Based on case-handling data disclosed in the Supreme People's Procuratorate work report, 1.688 million persons were prosecuted in 2023, 578,000 were not prosecuted, 31,000 were subject to conditional non-prosecution, and 54,000 were not prosecuted because the conduct did not constitute a crime or the evidence was insufficient. Because special non-prosecution is rarely used in practice and no data have been disclosed, the discretionary non-prosecution rate of procuratorial organs in 2023 can be calculated at approximately 21.8 percent.
- [7] Guo Shuo (2018), A Reconsideration of the System of Discretionary Non-Prosecution, *China Legal Science*, no. 3, p.228-248.
- [8] Cities W and S are prefecture-level cities in two eastern coastal provinces of China. The author conducted interview-based field research at basic-level procuratorates in these two regions.
- [9] Bian Jianlin (2022), The Theoretical Development and Institutional Improvement of Cautious Prosecution, *Law Science*, no. 5, p.126-143.
- [10] Zhang Shuzhuang, Zhou Hongqiang & Chen Long (2019), Operational Considerations and Improvement Paths for China's Discretionary Non-Prosecution System: From the Perspective of Discretionary Non-Prosecution Cases in Province S after the Amendment to the Criminal Procedure Law, *Rule of Law Research*, no. 1, p.46-54.
- [11] Gu Weishuang & Zhang Yili (2020), Conflicts and Resolution Mechanisms between the Judicialization of Prosecutors' Independent Case-Handling and the Administrativeization of Procuratorial Integration in the Context of Judicial Reform, *Study Forum*, no. 10, p.91-96.
- [12] Article 22 of the Opinions provides that the chief prosecutor may review cases or case-handling matters decided within the scope of a prosecutor's authority. In reviewing a case, the chief prosecutor may require the prosecutor to re-examine it, submit it to the procuratorial committee for discussion and decision, or directly make a decision. Article 7 of the Guiding Opinions on Improving the Prosecutors' Power List provides that, for case-handling matters undertaken by prosecutors, the chief prosecutor may, by written instruction or other means, require the obligation of "submission for review" to be performed before legal documents are signed and issued. In specific cases, the chief prosecutor may also require "submission for review" before legal documents are signed and issued.
- [13] Article 6 of the Prosecutors Law of the People's Republic of China (2019 Revision) provides: "Prosecutors' performance of duties in accordance with law is protected by law and shall not be interfered with by administrative organs, social organizations, or individuals."
- [14] Chang Jiekun (2021), The Application and Improvement of Procuratorial Organs' Power Not to Prosecute, *Journal of Gansu University of Political Science and Law*, no. 5, p.57-66.
- [15] Shao Hui (2013), The History and Present of Procuratorial Integration, *Journal of National Prosecutors College*, no. 1, p.83-103.