

# Research on the System of First Violation without Penalty

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## Abstract

**With the continuous deepening of the construction of a digital rule of law government and the implementation of the principle of inclusive and prudent supervision in multiple fields represented by the business sector, the latest revised Administrative Penalty Law of the People's Republic of China in 2021 has for the first time stipulated the first violation without penalty system in Article 33. The "first violation without penalty " system draws on the "minor violation without punishment" system and conforms to the trend of government function transformation, which is a novel measure in the field of administrative law enforcement. In this article, the author will analyze the system from two levels. At the theoretical level, the connotation of the system will be explained through its origin, practical significance, and comparison with "minor non punishment"; At the practical level, analyze the practicality of the system by combining the "first violation without penalty " lists from multiple regions. The author will also analyze the problems that exist during the implementation of the system and provide their own suggestions.**

## Keywords

**First Violation without Penalty; Administrative Penalty; Administrative Discretion.**

## 1. Overview of the System of First Violation without Penalty

### 1.1. The Source of the First Violation without Penalty System

Before January 2021, the Administrative Penalty Law of the People's Republic of China had not been revised, and there was no clear provision in the law regarding the "first violation without penalty " system. However, in the previous 1996 Administrative Penalty Law, we can see the predecessor of the "first violation without penalty" system, which is the provision in Article 27 of the law for four situations of lenient or mitigated punishment, as well as the relevant provisions for "minor non punishment". Chinese scholars generally believe that the "first violation without penalty " system is established under the background of the new era, with the promotion of the comprehensive rule of law, the continuous improvement of the construction of a digital rule of law government, the continuous development of the principle of inclusive and prudent supervision, and the continuous deepening of the concept of "people-oriented"[1]. The establishment of the "first violation without penalty" system is committed to promoting the transformation of government functions and enabling the government to better practice the purpose of "serving the people wholeheartedly"; Committed to promoting economic development, maintaining social stability, and providing a better business environment for enterprises, especially small and medium-sized enterprises, in the region.

### 1.2. The Practical Significance of the First Violation without Penalty System

The latest revised Administrative Penalty Law of the People's Republic of China provides the following explanation for the "no penalty for first-time violations" system: "For first-time

violations with minor harmful consequences and timely corrections, administrative penalties may not be imposed

Firstly, 'first violation without penalty' is conducive to reducing the cost of administrative law enforcement. The investment of administrative law enforcement costs is a necessary condition for obtaining administrative benefits. Without a certain investment of law enforcement costs, behaviors that harm society cannot be recognized as administrative violations, let alone given corresponding administrative sanctions. In terms of administrative penalties, the costs required for individual cases include the time, money, and manpower spent on investigating and imposing penalties for administrative violations, as well as the additional costs incurred by the parties involved in responding to the administrative penalty decision after applying for reconsideration or filing a lawsuit[2]. If the same cost is invested in a minor illegal act and its consequences as the general punishment, it is obviously far less profitable and not worth the loss. The excessive number of administrative penalties and high penalty rates in a certain field may not necessarily prove proper governance in that field, but may instead reflect the situation of inadequate law enforcement investment, insufficient law enforcement capabilities, and excessive reliance on penalties by law enforcement agencies. The principle of 'first violation without penalty' is a supplement and improvement to the exemption from punishment. The exemption list formed in practice is to concretize and clarify the exemption from punishment system, provide basic guidance for administrative law enforcement personnel, further regulate administrative law enforcement powers, and improve law enforcement efficiency.

Secondly, it is conducive to implementing the principle of combining punishment with education. The combination of punishment and education "is one of the basic principles of administrative law. Administrative law enforcement practice has shown that before the establishment of the" first violation without penalty "system, when the discretion of administrative punishment is large, law enforcement personnel tend to use" punishment "to avoid potential inaction responsibilities. This not only creates problems such as" using punishment to manage ", " using punishment to replace education ", and" punishing one person at a time ", but also may lead to the offender's rebellious mentality due to excessive punishment, which is not conducive to the construction of social harmony and stable order, and also undermines the principle of" excessive punishment is equivalent ". Punishment and prevention are both the purposes of administrative punishment, and they are not in parallel. Punishment is a prerequisite restriction on administrative punishment, while prevention is the value pursuit of administrative punishment[3]. The ultimate goal of administrative punishment is not punishment, but to achieve preventive effects through punishment. The principle of 'no punishment for first violation' correctly distinguishes between general violations and minor violations, giving the parties the opportunity to correct themselves, and truly treating punishment as a means of correction, rather than as an assessment indicator of the 'punishment rate' of administrative agencies.

Finally, it conforms to the concept of inclusive and prudent regulation. The so-called tolerance refers to adopting a tolerant attitude towards new business models that are unknown more than known; The so-called "prudence" has two meanings: first, to give the new business model an "observation period"; second, to strictly adhere to the safety bottom line and resolutely crack down on serious illegal activities in accordance with the law. The key to inclusive and prudent regulation lies in controlling the discretionary power of administrative agencies and respecting the free innovation of operators. This requires that in the law enforcement process, it is necessary to reflect a correct understanding of the rules on the basis of reasonable rules, that is, to achieve precise law enforcement, neither neglecting to perform duties nor excessively or ahead of schedule law enforcement. Especially when the development laws of new business models have not been identified, regulatory authorities should adopt a regulatory strategy that focuses on compliance guidance and supplemented by administrative penalties for enterprises

with strong innovation capabilities. They should actively apply flexible law enforcement measures with short-term and temporary characteristics such as advice and orders to correct, in order to meet the requirements of the principle of inclusiveness and prudence[4]. The principle of 'first violation without penalty' mainly serves the development of new technologies, industries, formats, and models, and has great inclusiveness in guiding innovative enterprises and small and medium-sized enterprises to enter a healthy and benign development track. Actively implementing the "first violation without penalty" system is not only conducive to increasing the vitality of enterprises, but also can encourage regulatory authorities to strictly abide by the safety bottom line and resolutely crack down on serious illegal activities in accordance with the law.

### **1.3. The Similarities and Differences between "First Violation without Penalty" and "Minor Violation without Penalty"**

The similarity between "first violation without penalty" and "minor violation without punishment" mainly lies in their subjective level. The ultimate goal of both systems is to "not punish", that is, to give those who have committed administrative violations for the first time, committed administrative violations with minor social harm, and subjectively corrected them in a timely manner the opportunity to reform themselves. The concepts of "first violation without penalty" and "no punishment for minor violations" subjectively implement the people-oriented law enforcement concept, enabling administrative agencies to exercise their discretionary power reasonably and fully, which is conducive to improving the credibility of the government[5].

On the contrary, the difference between "first violation without penalty" and "minor violation without punishment" mainly lies in their objective aspects[6]. The principle of 'first violation without penalty' mainly emphasizes the number of times the perpetrator has committed administrative violations, that is, the emphasis is on the 'number' and 'first time'. Here, we can compare the sentencing provisions for recidivists in the Criminal Law. Due to the deep subjective malice of recidivists, they should be punished more severely. Although there is no clear provision in the Criminal Law regarding sentencing for first-time offenders, in the judicial system, most first-time offenders are deemed to have statutory circumstances for lighter or mitigated punishment. Compared to repeat offenders and recidivism, first-time offenders generally receive lighter punishment. Therefore, the author believes that the "first offense" in "no punishment for first offense" can also be understood as the "first offense" in administrative violations. Since the social harm of administrative violations is much smaller than that of criminal acts, the "first offense" in administrative violations can be exempted from punishment if the circumstances are minor and corrected in a timely manner; The principle of 'minor non punishment' mainly emphasizes the social harm of administrative violations committed by the perpetrator, that is, the emphasis on 'quantity'. The author believes that this can be compared with the provisions in the specific provisions of the Criminal Law. For example, the sentencing threshold for intentional homicide is "imprisonment for not less than three years but not more than ten years", and the highest sentence is the death penalty. The sentencing threshold for theft is "imprisonment for not more than three years, detention, or public surveillance". Although the maximum sentence can be life imprisonment, few thieves seen in daily life are sentenced to the highest sentence for theft in the Criminal Law. The reason for this is very easy to understand. The object of intentional homicide is the right to life of citizens, which is the most precious right of citizens. The object of theft is the property right of citizens, which is also one of their basic rights, but its importance is far from the right to life. Returning to the field of administrative penalties, the social harm of minor violations such as not wearing seat belts and parking violations is undoubtedly lower than that of administrative violations such as drunk

driving. Therefore, for such illegal activities, the principle of "minor non punishment" can be applied as appropriate.

## **2. Analysis of the Application of the First Violation without Penalty System Checklist**

### **2.1. In the Field of Housing Management - Taking Changchun Housing Management Bureau as an Example**

With the continuous deepening of the construction of a rule of law government, the functions of the government have undergone significant changes, and the fault tolerance mechanism for administrative counterparts has become increasingly perfect. The government has transformed from a leader in the administrative field to a leader. In order to better implement the system of first violation without penalty, many local governments have released a list of applications for the first violation without penalty system, which involves multiple important aspects related to national economy and people's livelihood, such as housing management, drug supervision, taxation, etc.

In the field of housing, the Changchun Housing Security and Housing Management Bureau issued the "List of 'first violation without penalty' Matters (Trial)" on May 19, 2023, which stipulates that multiple situations where illegal acts are not punished for the first time. For example, in the punishment for failing to fill out the "Real Estate Development Project Manual" as required by regulations or failing to file with the municipal real estate management department on time, if the perpetrator (or enterprise) meets the three conditions of "first-time implementation of illegal behavior; no impact on information collection; and through persuasion, education, demonstration, administrative guidance and other means, the development enterprise fills out the "Real Estate Development Project Manual" as required by regulations and files with the municipal housing security and housing management department on time," then the perpetrator (or enterprise) will not be subject to administrative punishment. In the "non punishment" section of this clause, the term "first-time violation of the law" specifies the time requirement; The statement 'did not affect the collection of information' indicates that the harmful consequences of this illegal act are minor; Through persuasion, education, and other means, the relevant documents were filled out as required within the deadline and filed on time, which reflects the timely correction of the illegal behavior by the perpetrator (or enterprise). Therefore, it is only natural that the perpetrator (or enterprise) should not be subject to administrative penalties.

### **2.2. In the Field of Drug Regulation-Taking Guizhou Provincial Drug Administration as an Example**

In the field of drug supervision, the Guizhou Provincial Drug Administration released the "List of Minor Violations in the Drug Supervision Field of Guizhou Province that are Not Punished" in November 2022. The list includes 16 violations that are not subject to administrative penalties, including drug, medical device, and cosmetics supervision. Each violation clearly defines the applicable conditions, and only violations that meet the conditions are considered not to be punished.

Among them, the provisions on the second category of non punishable items in the "List" belong to the scope of first violation without penalty. If it is the first violation of the regulations on the supervision and management of drugs, medical devices, and cosmetics, with minor consequences, and the party has already made corrections on their own or has made corrections within a certain period of time after being ordered to do so by the drug regulatory department, no administrative penalty shall be imposed. For example, violating Article 18 and Article 38 of the Measures for the Administration of Adverse Drug Reaction Reporting and

Monitoring, which stipulate that drug manufacturers have not established and maintained records for adverse drug reaction reporting and monitoring; If the drug manufacturing enterprise fails to submit regular safety update reports for domestically produced drugs that meet the requirements on time, and meets the prerequisite conditions of "initial+minor+correction" mentioned above, the first violation can be exempted from punishment[7].

In the above regulations, "initial" and "correction" are relatively easy to identify. Law enforcement agencies can determine whether a company is "first-time" by retrieving its illegal records, and after ordering the company to rectify, regular supervision and inspection, paying attention to the company's social credit and evaluation, can determine whether the company has "corrected within the deadline". However, it is difficult to determine "minor" because drugs are different from basic infrastructure such as housing, and the quality of drugs is closely related to the health and well-being of the people. Therefore, if a pharmaceutical company fails to submit relevant reports and establish relevant files in a timely manner, it may cause adverse reactions in the drug users due to the drugs being sold; If there are situations where the drug has excessive side effects or does not meet national drug safety standards, then it cannot be determined that the harm consequences are "minor", and strict accountability should be carried out in accordance with legal provisions. From this, it can be seen that the application standards of the "first violation without penalty" system in different fields should be determined based on actual situations, and a "one size fits all" approach should be avoided[8].

### **2.3. Taxation Field - Taking Juancheng County Taxation Bureau in Heze City, Shandong Province as an Example**

In the field of taxation, a tax bureau in a certain area of Shandong Province has announced two classic cases of first violation without penalty. Firstly, Shandong Chenkai Engineering Equipment Co., Ltd. was unable to declare stamp duty in a timely manner due to changes in internal financial personnel and the new finance department's lack of familiarity with the relevant business. The tax bureau believes that the company's first-time overdue declaration and timely proactive correction meet the conditions of no punishment for first-time violations, so no punishment will be imposed on the company; Secondly, due to insufficient understanding of some tax policies, the relevant tax personnel of Heze Jialian Biotechnology Co., Ltd. did not timely declare urban construction tax, education surcharge, and local education surcharge. Tax bureau handling method: Provide on-site guidance and issue a notice of rectification within a specified period. The company subsequently made corrections, and the tax bureau deemed it compliant with the principle of first violation without penalty and therefore did not impose any punishment. The tax authorities in the area have also released two batches of a total of 14 "first violation no penalty" items list, including provisions related to "taxpayers failing to submit all their bank accounts to the tax authorities in accordance with the Tax Collection Management Law and its implementation rules." "Taxpayers failing to obtain invoices in accordance with the Tax Collection Management Law and its implementation rules, invoice management measures, etc., using other vouchers instead of invoices and having no illegal gains.

Undoubtedly, the items specified in the list of the area well interpret the meaning of "minor harm consequences". Firstly, in the income of enterprises, nine types of income, including sales of goods, provision of services, transfer of property, dividend income, interest income, rental income, franchise fee income, and donation income, are subject to taxation. Four types of income, including fiscal appropriations, administrative fees collected and included in fiscal management in accordance with the law, and government funds collected and included in fiscal management in accordance with the law, are not subject to taxation[9]. Therefore, in the case where taxpayers fail to submit all bank accounts in accordance with relevant regulations, there may be situations where the funds in the bank accounts that taxpayers have not submitted are

income funds that do not need to be taxed under the above four items. If this assumption is true, then the possibility of the company evading taxes is very small, and it can be considered as having "minor harmful consequences". Secondly, the behavior of "using other vouchers instead of invoices" is not uncommon in daily life. For example, when we go to restaurants for meals or drive to gas stations to refuel, we occasionally encounter system or machine failures. At this time, the staff will hand write a certificate and stamp it with the official seal of the relevant company, and inform us that after the fault is restored, we can use the certificate to issue invoices for previous consumption at the restaurant or gas station. In the author's opinion, if the corresponding merchants actively issue invoices to consumers after they provide proof, and even some merchants provide door-to-door services to mail invoices to consumers, the possibility of tax evasion by merchants is also very low and can be considered as "minor harm consequences".

From this, it can be seen that with the continuous deepening of service-oriented government construction and the implementation of the principle of inclusive and prudent supervision in various fields, the "first violation without penalty" system has emerged like mushrooms after rain in many major areas related to national economy and people's livelihood. The issuance of the list of "first violation without penalty" items in various regions not only represents the implementation of national policies by local governments, but also represents the real practice of the scientificity, democracy, and legality of administration by local governments. It also represents that local governments at all levels are competing to deliver a perfect answer in the exam of serving the people.

### **3. Problems in the Application of First Violation without Penalty System**

#### **3.1. Controversy over the Applicable Requirements**

Firstly, the first-time violation, as the first and core element of the application of non punishment for the first violation, is the premise and basis for administrative law enforcement agencies to determine "non punishment". The identification of "first violation" is one of the urgent problems to be solved, and there is still great controversy in both theoretical discussions in academia and specific local practices. Although theoretical research is constantly increasing, scholars have not formed a unified understanding. For example, Professor Jiang Guohua believes that "first violation" should be understood separately, that is, "first" refers to the first time it is discovered and the first time the illegal act occurs, and "violation" refers to the first violation within a certain period of time[10]. Professor Zhang Hong believes that "first-time violations" should be divided into "one-time first violation without penalty" and "periodic first violation without penalty" based on the length of the retrospective time, and the specific determination should be based on the characteristics of the field and the actual situation of the locality[11]. Professor Wang Chunye proposed that "first-time offenders" should be distinguished within the same space and field, and combined with a certain time frame[12].

Secondly, the element of "minor harm consequences" should be identified from both subjective and objective perspectives. Objectively speaking, the harmful consequences caused by the application of the principle of "first violation without penalty" in administrative violations are objectively present and represent an objective reality. Subjectively speaking, the judgment of the degree of harm and consequences is a manifestation of the administrative agency's exercise of discretionary power. The evaluation of the damage caused by illegal behavior to the public interest and the legitimate rights and interests of citizens inevitably includes subjective value. Some scholars have explained the requirement of "minor harm consequences", but there is still some controversy and no consensus has been reached.

Finally, regarding the time limit and degree requirements for the element of "timely correction", the lack of unified application standards by administrative law enforcement agencies has had a

certain impact on law enforcement work. Some scholars believe that "timely correction" requires the perpetrator to immediately correct the illegal behavior and remedy the harmful consequences on the spot. Some scholars hold a different view, that is, they believe that "timely correction" includes two ways: actively correcting before the harmful results occur and correcting within the ordered period. As long as it does not cause serious harm to public interests and individual rights and interests of citizens, it meets the requirement of "timely correction"[13]. From this, it can be seen that the principle of "first violation without penalty" in the Administrative Penalty Law is strong, but its practical operability is weak and lacks corresponding refinement of laws and regulations.

### **3.2. Lack of Supervision over Administrative Discretion**

The principle of first violation without penalty allows administrative agencies to have a greater degree of autonomy and discretion. Therefore, supporting supervision should also be established to ensure that administrative agencies can implement administrative actions within the limits of the law and not engage in actions beyond the legal scope.

Firstly, judicial supervision needs to be strengthened. In the practice of first violation without penalty, when the counterparty disputes the administrative action and chooses administrative reconsideration, the higher-level government often supports the decision of the lower level government and rules to maintain the original agency's behavior, which may make it difficult to exert the internal supervision effectiveness of the administrative agency. Therefore, in the process of applying the principle of first violation without penalty, it is necessary to invite judicial organs to intervene and use external supervision to urge administrative organs to administer according to law, safeguard the legitimate rights and interests of administrative counterparts, and enhance the effectiveness of first violation without penalty.

Secondly, the judicial authorities themselves should also be the subject of supervision. The judicial supervision of the system of first violation without penalty should consider whether the court has the power to incorporate administrative discretion into its supervision scope and establish corresponding review standards. The exercise of administrative actions is subject to certain restrictions, and so is administrative discretion. If it exceeds the limit, it constitutes an illegal act. Judiciary is the last line of defense for safeguarding social fairness and justice. If effective judicial supervision of administrative discretion cannot be carried out, it will promote the arbitrariness of administrative agencies in exercising administrative actions. The court has the power to conduct judicial review of administrative discretionary actions. According to Article 70 of the Administrative Litigation Law, the court can make a revocation judgment on the grounds of "obvious impropriety", and therefore the court also has the power to review the legality of administrative actions. However, the court lacks standards on how to judge administrative actions as clearly improper, and it is also easy for the court to confuse "clearly improper" with "abuse of power" when making judgments. Therefore, when the perpetrator is subject to administrative penalties for "first violation without penalty" and resorts to the court, the final result of the court's judicial review of the administrative action will definitely be closely related to the legitimate rights and interests of the perpetrator. So uncertain review standards not only have a negative impact on the legitimate rights and interests of the plaintiff, but also limit the effectiveness of judicial review to a considerable extent, failing to achieve the goal of curbing the abuse of administrative discretion by administrative agencies.

Finally, social supervision needs to be strengthened. We need to strengthen the supervision of administrative actions, and social supervision plays an important role. Chinese laws also grant citizens the right to be informed and the right to criticize and make suggestions. However, in practice, the implementation of citizens' rights is not ideal, and social supervision has not received sufficient attention, resulting in a significant reduction in its effectiveness. The participation of the public plays an important role in the smooth exercise of administrative

discretion. If there is a lack of public participation in the formulation of discretionary benchmarks, and only professionals or internal personnel of administrative agencies participate, it may lead to obstacles in the later application of discretionary benchmarks, and the relevant discretionary results may not be widely recognized by citizens and may not be in line with the general social concepts of the public. If information disclosure is done well at the beginning of formulating discretionary benchmarks, providing a good channel for public participation and enhancing public enthusiasm for participation, it will be conducive to preventing administrative arbitrariness and demonstrating the characteristics of consultative democracy.

### **3.3. Low Level of Public Participation**

Public participation is an important way for modern rule of law countries to ensure procedural justice, and the recognition of administrative counterparts is the best affirmation of the system of first violation without penalty. At present, the discretionary standards for administrative penalties and the exemption lists implemented in various regions are generally based on guidelines, policies, laws and regulations, and grassroots practical experience as references, and the content and form are not innovative enough. The system of first violation without penalty involves a wide range of aspects, but lacks public discussion and opinions from experts in various industries. When formulating implementation rules, administrative agencies are easily limited by their own perspectives. The delineation of the scope of application is unilaterally led by administrative agencies, and the demands of administrative counterparts for "non punishment" are indeed diverse. The current model adopts a indifferent attitude towards the interests and demands of a small group, which cannot adapt well to the dynamic and open development trend[14]. The principle of first violation without penalty is widely applicable in the business environment, where the business activities of market entities are closely related to the lives of the public. The harmful consequences caused by some illegal acts are ultimately borne by the general public, and the lack of effective public participation can lead to social injustice.

In terms of information disclosure, some regions have started to only report and notify through mass media, but only provide simple responses to questions raised by the public on the citizen inquiry platform. Many questions from the general public and violators have not been answered in a timely manner, and a series of actions have highlighted the neglect of public participation. In daily life, people often believe that laws and regulations are irrelevant, and that it is only after the perpetrator commits illegal acts that their rights and obligations are impacted. A considerable portion of the public ignores the impact of the first violation of the non punishment system on their own rights and obligations, and is "detached" from the formulation of the participation system, lacking initiative.

## **4. Suggestions for the Improvement of First Violation without Penalty System**

### **4.1. Clarify the Criteria for Determining the Applicable Requirements**

Firstly, regarding the determination of first-time violations, first-time violations refer to the first violation of administrative obligation norms discovered by the administrative entity. By comparing the relevant legal norms on first-time violations in different regions and departments, it can be seen that the determination of "first-time" varies among different regions, departments, and fields. Including 'once in a lifetime' and periodic violations. For example, the "Application Rules for the First Violation of the Non Penalty List in the Market Supervision Field of Sichuan Province (Trial)" specifies a period of 3 years for the first violation, which means that law enforcement in the market supervision field follows a cycle of 3 years. If

a person has already committed the first violation without penalty during this cycle and subsequently commits the same illegal act again, their illegal behavior should be punished according to law; If the condition of not imposing penalties for the first violation has been met for at least 3 years and the same illegal act occurs again, the administrative legal responsibility may not be pursued[15]. Differently, the Jiangxi Provincial Department of Market Supervision and Administration believes that if the party has no record of being punished for the same type of illegal behavior on platforms such as the National Enterprise Credit Information Publicity System, it can be deemed as a first-time violation. The Department of Market Supervision and Administration of Fujian Province has also expressed a similar attitude. The method of determining "first-time" is to check the information in the system and platform to determine that the party has not engaged in any of the listed illegal activities before, and it can be recognized as "first-time". In the field of transportation, it is common to adopt an annual cycle. For example, the "Opinions on Promoting the Commitment System for Notifying Minor Violations in the Field of Transportation (Trial)" issued by the Zhejiang Provincial Department of Transportation and the Zhejiang Provincial Comprehensive Administrative Law Enforcement Guidance Office stipulate that one of the conditions for not imposing administrative penalties on minor violations in the field of transportation is "being caught for the first time in the current year within the province. The author believes that the reason for the above different situations is that the nature of violations in each field is different, and the amount of violations in each region is different. The transportation field adopts a one-year cycle, which is suitable for the large base of violations in this field, easy to detect, and can be corrected in a timely manner. Due to the relatively low social harm, the market supervision and management field adopts a five-year cycle to provide enterprises with a predictable period of time, which can provide a good business environment and development space for new forms of economy and emerging enterprises, while creating a more inclusive and relaxed legal environment. From this, it can be seen that local governments should clarify the criteria for identifying "first-time offenders" in different fields based on actual situations. However, regardless of the identification method adopted, it should be promptly announced to the public and strictly enforced based on this, in order to avoid confusion in law enforcement and loss of government credibility caused by vague and uncertain standards.

Secondly, regarding the determination of "minor harm consequences", according to Article 5(2) of the Administrative Penalty Law, the determination of the seriousness of illegal acts should be based on facts, nature, circumstances, and the degree of social harm, but there is no clear explanation for what constitutes "minor". At the normative level, some local documents have established corresponding definition standards for minor illegal acts and minor harmful consequences in the application conditions of first violation without penalty. For example, the "Sichuan Province Market Supervision First Violation Non Punishment List" sets out the applicable conditions for various minor violations, mainly including the duration of the violation, the amount of illegal gains, and whether it has not caused personal injury or property damage to consumers or has caused property damage but has been compensated according to law; In the "Guiding Opinions on Not Punishing Minor Illegal Acts in the Market Supervision Field of Jiangxi Province", the determination of minor harm consequences is based on whether the illegal act has a specific target as the type classification, and then refined according to different types, including the degree of damage and whether the social impact has been eliminated or reduced. The specific application conditions in the above documents provide clear guidance on whether the first violation can be exempted from punishment. However, from existing laws, regulations, rules, normative documents, and local work documents, only a few have made relevant provisions. Faced with a large number of illegal acts, the problem of determining "minor" still cannot be effectively solved. Therefore, we should seek answers from judicial cases that can be used as a reference for the majority.

Finally, regarding the determination of "timely correction", "timely" refers to stopping illegal behavior within a reasonable time, and "correction" refers to correcting it within the framework allowed by law. Some scholars believe that the determination of "timely" should be made before it is discovered by the administrative agency. The contradiction caused by this definition is that since the perpetrator has corrected their illegal behavior before the administrative agency discovers it, it greatly reduces the possibility of the administrative agency discovering the illegal behavior in situations where the harm is minor and the damage has been compensated for. The author believes that "timely correction" includes both proactive correction before the administrative agency discovers it, as well as immediate correction after the administrative agency discovers it or correction within the time limit set by the administrative agency. This can also be confirmed in existing documents related to non-punishment for first-time offenders. If the Market Supervision Department of Jiangxi Province considers that the party concerned made corrections before the market supervision and management department filed the case or within the time limit for correction, it can be recognized as timely correction. In the field of transportation, minor violations such as illegal parking that can be corrected on the spot or in a short period of time have a higher standard of "timely", generally referring to being detected on the spot or within one or two hours. In the field of market supervision, if most illegal activities cannot be corrected immediately upon discovery, a relatively low judgment standard can be adopted, such as ten or fifteen days from the date of being ordered to correct.

#### **4.2. Strictly Regulate Administrative Discretion**

Whether a certain behavior has minor harmful consequences, can be corrected in a timely manner, and can be exempted from punishment, etc., all give administrative organs greater administrative penalty discretion. Administrative law enforcement departments at all levels should coordinate the implementation of the exemption list and standardize the work of administrative penalty discretion. By comparing laws and regulations, based on the accurate facts, nature, circumstances, degree of harm, and actual consequences caused by different administrative violations, and in accordance with the principles of legality, science, fairness, and reasonableness, taking into account both statutory and discretionary factors, the types of administrative penalty behaviors are sorted, classified, and refined one by one, included in the management of administrative penalty discretion standards, and evaluated in a timely manner to establish a dynamic adjustment mechanism. For administrative violations of "first violation without penalty" that are found to have excessive or insufficient discretion in the evaluation, law enforcement agencies should promptly record and report them, and also reflect on them in a timely manner. Adhering to the principle of learning from mistakes and gaining wisdom, a "first violation without penalty" case handling file should be formed to provide guidance and reference for future law enforcement work. For cases where administrative counterparties suffer losses due to excessive discretion in law enforcement, law enforcement departments should promptly make up for it. For cases where discretion is too light, relevant measures should also be taken.

In terms of judicial supervision, since the promulgation of China's Administrative Litigation Law, it has been clearly stipulated that the court can revoke the "abuse of power" behavior of administrative organs. After the revision in 2014, a review standard of "obvious impropriety" was added, so the court has the right to review the reasonableness of administrative actions. However, China's Administrative Litigation Law has not made clear provisions on the corresponding relationship between "abuse of power" and "obvious impropriety" and the standards of administrative discretion judicial review, resulting in the ambiguity of the standards of administrative discretion judicial review. In practice, courts often confuse the concepts of "abuse of power" and "obvious impropriety", but in essence, the two serve different

functions of examining reasonableness from different perspectives. Abuse of power "has obvious subjective fault characteristics, that is, administrative agencies knowingly violate legal provisions and principles, but still carry out actions prohibited by law. And 'obviously inappropriate' refers to the fact that although the administrative agency has not exercised any behavior that conflicts with legal provisions, its behavior is clearly contrary to common sense. Not meeting the requirements of fairness. Therefore, whether in theory or practice, it is necessary to clarify the boundary between "abuse of power" and "obvious impropriety" and determine the judicial review standards for both. When reviewing the administrative discretion for "first violation without penalty " behavior, whether it is establishing standards for "abuse of power", "obvious impropriety", or other types of review standards, a clear standard should be established for judicial review. And use this standard to review the legality of the "first violation without penalty " discretion benchmark. If the discretion benchmark is legal, it is necessary to determine the legality of the administrative agency's discretion based on the special circumstances of the case and the provisions of the law itself, in addition to the discretion benchmark[16].

In terms of social supervision, social supervision can play an important role in supervising administrative actions and reflecting public opinion, creating favorable conditions for building a rule of law society and a rule of law government. However, compared to public authorities, social entities are in a disadvantaged position and cannot receive sufficient attention from supervisory authorities, thus unable to fulfill their supervisory functions. There is also such a problem in the "first violation without penalty " system. Therefore, it is necessary to improve the mechanisms for people's supervision and media supervision, smooth communication channels for social supervision, fully mobilize the enthusiasm of social subjects, and activate the effectiveness of social supervision. Firstly, for the supervision mechanism of the people, mechanisms such as reporting feedback, rewards, confidentiality, and protection can be established, and a reporting channel can be opened to carefully verify the reported content and promptly inform the informant of the handling situation. For reported matters that have been verified as true, rewards will be given to the informants. For acts of retaliation against public supervision and reporting, strict punishment measures shall be clearly stipulated. Secondly, as for the media supervision mechanism, we should see that the supervision power of network supervision is gradually emerging with the popularity of the Internet. To fully leverage the supervisory power of the media, it is necessary to establish a system for filing, registering, and investigating cases exposed by the media. Timely investigations should be carried out on cases exposed by the media, and the investigation and final results should be made public to the public.

### **4.3. Expand Channels for Public Participation**

The system of first violation without penalty is widely applicable and covers a large amount of professional knowledge. For matters with strong technical expertise, in addition to holding expert seminars and listening to expert opinions, symposiums and hearings should also be held in various industries to incorporate the opinions of market entities and their frontline workers. As potential administrative counterparties applying the principle of 'first violation without penalty ', market entities can provide accurate suggestions for the exemption list based on their own industry characteristics that are in line with their own interests. If adopted, it can create a relatively relaxed business environment for themselves and even their industry, making it feasible as a subject of public participation. For the general public, there are often situations where there is insufficient understanding of administrative penalties. As many matters are unrelated to their daily lives, their willingness to participate is not strong. In many regions and industries, after the implementation of the exemption list, the general public is also unaware of the dilemma of seeking opinions. In this regard, it is necessary to ensure that the general

public's right to know and suggestion about the "first violation without penalty" system is protected, and to broaden the channels for the public to know and participate. Before the official release of the exemption list, we will use existing digital platforms and mass media to publish opinion solicitation notices through an "online+offline" model, and increase publicity efforts for opinion solicitation. For example, we can widely listen to suggestions from various levels and fields of the public through various forms such as survey questionnaires, voting, street random interviews, and symposiums, and actively respond to their demands.

In addition, law enforcement agencies can regularly organize visits to relevant industry entities to carry out corresponding legal publicity work and achieve precise publicity. And after the implementation of the "first violation without penalty" system, regular collection of law enforcement data and cases will be conducted to form guiding cases, providing a basis for the future application of the "first violation without penalty" system. In addition, public opinion surveys should also be carried out, and questionnaires should be issued on the official account or small procedures of the administrative organ to investigate the satisfaction of the people with the application of the "first violation without penalty" system, and collect the opinions and suggestions of the people.

In summary, the system of first violation without penalty is a refinement and development of the system of minor non punishment. This system is conducive to promoting the construction of a digital rule of law government and is a novel measure to promote the transformation of government functions, with strong theoretical and practical significance. However, there are still certain shortcomings in the application requirements, discretion scale, and public participation when the system is implemented, which require joint efforts from administrative agencies, judicial agencies, and the general public to improve.

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