

On the Limitation of Public Interest to Private Interest in Administrative Law

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Abstract. In recent years, by the opportunity of the amendment of Constitution and the enactment of the Bill of Property Rights the scholars have made an overall investigation and studies in many viewpoints, the scholars have not got to a common view on the deep theory of the relation between public interests and private interests, the definition of public interest and private interest has become increasingly unclear. What is the logic that public interests limit the private? How to face up with the condition which the two kinds of interests mingled with each other? The paper focus on analyzing the public interests from the viewpoint of the legal theory, combining the positive analysis on the legal norms about the limitation of public interests to private interests at administrative law of China, so that the public interest limits the private interests to be effectively regulated.

1. Introduction

Public interests is of importance at public law, especially at administrative law. Because of the close relation between the public interests and private interests, and that the public interests embodied predominantly through private interests, with the public administration extending continually, the danger of infringement of the private interests and the rights of citizen's increases. In this sense, to establish the standard of public interests at administrative law and regulate the act of the limitation of public interests to private interests become necessarily an important question in theory and practice. public interests exists, it is a starting point for the public regulation , public service and the public order, public interests comes from private interests, but they are different, public interests and private interests have either the consistency or conflicts; public interests is either a theoretical conception or an uncertain legal concept at administrative law, the limitation of public interests to private interests should be accordance with legally retained principle, proportion principle, due process principle, and so on

Therefore, what exactly is "public interest", whether there is an independent "public interest", what is the relationship between "public interest" and "private interest", and what criteria are used to identify or judge "public interest" are questions to be solved. It is also a new research topic that we cannot bypass. Although the former researchers have given us a lot of helpful information and ideas, however, our understanding of China's "public interest" needs to be strengthened, and people's misconceptions about it need to be clarified. Only in this way can we guide administrative legislation, administrative law enforcement and administrative trial work so as to promote the development of China's administrative legality.

2. Correctly Understand the Relationship between Public Interests and Private Interests

Private interests generally refer to private recognition of objective objects that meet their various needs. Private is not the same as a single individual citizen, but includes natural persons, legal persons and other organizations. Correspondingly, private interests also include personal interests, corporate interests, and the interests of other organizations. The relationship between public interest and private interest is naturally formed. We should make a rational theoretical analysis of the relationship between public interests and private interests.

2.1. Overview of Public Interest.

There is a certain difference between the public interest, the national interest, and the social interest. The public nature—public purpose, public interest, public power, public behavior, etc.—is the fundamental difference between the government's public management and the enterprise management based on private ownership. The essential meaning of the public lies in representing public interests. In keeping with this, the government must insist on public purposes and assume public or public responsibilities. The public idea provides people with the opportunity to gather in the civil society. It is because of this that the concept of publicity has become the guiding concept of administration and has become the benchmark of public policy. The source of publicity lies in the common society.

2.2 The Relationship between Public Interests and Private Interests.

Public interests are generated in accordance with private interests. The traditional doctrine of civil law systems defines public interest as a part of private interests. In the field of administrative law, most scholars classify interests based on subjectivity or subjectivity first that is, dividing interest subjects into individual members of society, that is, individuals and members of society.

2.2.1 Consistency of Public Interests and Private Interests.

The understanding of this aspect should mainly start from several respective. First of all, public interest is not the opposite of a term that contrasts with personal interests. Public interest is the sum of individual interests. It is the interest of all people. Just as society is the sum of individuals, public interests are also the sum of these personal interests. Some scholars believe that "according to the definition of social utilitarianism, the 'public interest' is nothing else, that is, the sum of private interests, private or individual interests are part of the public interest, and there is no public interest beyond private interests. Secondly, from the perspective of the formation of public interest, the formation of public interest mainly involves two kinds of interests, namely personal interest and common interest. Among them, the common interest is mainly a collection of partial interests that are extracted from the personal interests of individuals and social organizations. Such interests are not enjoyed by the social organizations themselves but are to ensure the development of personal interests and finally to serve the individual' enjoyment. Finally, from the dynamic changes between the public interest and the private interest, under different circumstances, the public interest and private interest can be converted to each other. From the above three aspects of analysis we can see that there is a high degree of consistency between public interests and private interests.

2.2.2 Conflict Between Public Interest and Private Interest.

Although, in essence, public interests and private interests have consistency, when public interests are formed in private interests, the public interests will have inevitable conflicts with private interests because of the inconsistency between individual needs and social needs. It should be noted that in real life, the existence and realization of modern public interests are often associated with the restriction and derogation of private rights, that is, there is a contradiction between public interests and private right. Public interests cannot be the exclusive interests of a member of society. Therefore, each member of society is always opposed to separating public interests from their own personal interests, and always hoping to gain more from public interests. However, it should be avoided to re-identify the "society" as something abstract claiming that the protection of social public interests is only for the purpose of restricting personal interests.

3. Public Interests and Private Interests in Administrative Law

Whether it is the development of public interests or the maintenance of private interests, their legitimacy must be based on the corresponding laws. Therefore, when studying the limits of public interests on private interests in administrative law, the understanding and mastery of relevant laws cannot be ignored.

3.1 Administration and Public Interest, Private Interest.

Relevant scholars believe that the main purpose of the development of a country's public administrative activities is to fully realize public interests, and to maintain public order and promote

public welfare on this basis. In other words, if there is one thing that is beyond the scope of the personal field, which has caused a certain degree of influence on a certain area of society, then the administrative department may take some actions, and vice versa, the executive department will not take administrative activities intervene on it. However, we must not simply equate the administrative activities with the public interest but must fully understand that the starting point of administrative power must be based on the consideration of public interest needs. The exercise of administrative power must be constrained by public interests. Only in this way can its role be fully realized.

3.2 Theoretical Analysis of Public Interest and Private Interest in Administrative Law.

Since public interests and private interests occupy an important position in administrative law, the study of administrative law theory must fully consider the theoretical exploration of these two aspects. First of all, we must clarify the position of public interest in administrative law. From the perspective of the establishment of China, current administrative law, the rules, principles, and concepts are all based on the requirements of public interest. Therefore, it can be seen that public interests have become an important principle in administrative law and has also become a core concept in administrative law.

3.3 Priority of Public Interest in Administrative Law.

As mentioned above, public interest has become an important concept in administrative law. Therefore, a correct understanding of the priority theory of public interest is very important for the study of public interests on private interest restrictions. The priority theory of public interest in administrative law mainly includes two aspects: the absolute priority of public interest and the relative priority of public interest. Among them, absolute priority theory mainly refers to the issue of public interests, without any other conditions, it should be always put first, when conflict occur between private interests and public interests, private interests should be relegated to a secondary place it automatically. The relative priority theory of public interest is that some other conditions are attached to the priority issue. Researchers believe that if blindly implementing the public interest is the absolute priority, it will inevitably infringe private interests to some extent. Therefore, on the basis of the absolute priority of public interest, the relative priority of public interest should be appropriately implemented.

4. Limits of Public Interest to Private Interest in the Implementation of Administrative Law

4.1 Public Interest and Commercial Interests in the Implementation of Administrative Law.

At present, the issue of the division of public interests and commercial interests has received widespread attention. Regarding the restriction of private interests in the name of public interest, especially in the process of administrative expropriation, different scholars also have different views on this issue. There are two main views that exist at present. One view is that when conducting administrative expropriation activities in the public domain, any commercial interests should be avoided. Simply put, the development of public interests must be carried out on the premise that all members can enjoy some benefits, such as national defense, environmental protection, and public facilities. For example, some economic development zones and urban transformation should not be included in the scope of public interest. Another view is that there is an inseparable link between public interests and commercial interests, and sometimes it is difficult to separate the two. For example, in the construction of industrial parks involved in the process of urban construction, although this behavior cannot be included in the scope of public interest, but in a sense, this kind of behavior can obtain economic benefits to a certain extent. If the construction of a public place such as a hospital or school is involved in the construction process, then the social members will benefit to a certain extent. Therefore, when stipulating the commercial levy, all commercial activities cannot be divided outside the scope of public interest but should be rationally divided according to their specific characteristics.

4.2 The Proportionality Principle of Public Interest Restricting Private Interest.

It is also very important to have a full grasp of the proportionality principle when it comes to the study of private interest restrictions on public interests. The so-called proportionality principle mainly refers to the consideration between the measures taken by the state to achieve a certain purpose and the burden on the members of society. From a broad perspective, the principle of proportionality usually includes three-phase content, namely, the principle of appropriateness, the principle of necessity, and the principle of proportionality. Among them, the principle of appropriateness mainly refers to the scientificity and rationality of the measures taken to accomplish the purpose; the principle of necessity mainly refers to the selection from a variety of methods based on the principle of appropriateness. One way to minimize the harm to social citizens. The core of the principle of proportionality is mainly to consider the considerations between measures and goals, and fully consider social interests, national interests, and the infringement caused to members of society. Only in this way can we be able to put pressure on social citizens as much as possible on the basis of ensuring the full realization of our goals.

4.3 Prior and Fair Compensation for Public Interest Restrictions on Private Interest.

Although the restriction of public interests on private interests is to some extent inevitable, it should be noted that the restrictions imposed on them must have reasonable grounds. Because, when the public interest restricts private interests, it will inevitably reduce private interests to a certain extent. Under such circumstances, without compensation, it is bound to violate the justice and fairness. In the implementation of prior and fair compensation, the administrative agencies must make reasonable restrictions on private use in the name of public interest and give them relatively reasonable compensation. Simply put, if the administrative department wants to rationalize private interests into public interests, it must give corresponding compensation to the members of the society. Only in this way can we ensure that the public interest limits the private interests based on rationality.

5. Conclusion

In summary, with the continuous expansion of the range of public interests involved in China's administrative law, the accurate definition of the relationship between public interests and private interests has also become a major issue faced by relevant departments. From the analysis of this article, we can see that if we want to conduct an in-depth study of the limits of public interests on private interests in administrative law, we must first solve two problems, that is, to strengthen the correct understanding of public interests by the administrative subjects and the principles that the public interest should follow when restricting private interests. Only by effectively solving these two problems can the public interest be limited to the effective regulation of private interests, so that in the true sense the public interest can serve the protection of private interests.

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