Suggestions on Perfecting the Legality Review System of Administrative Act

Wang Long-yu

Department of Law, Northeastern University
Fujian, China

Li Han-ke

Department of Public Administration, Northeastern
University
Leshan, China

Yao Tian-chong

Department of Law, Northeastern University
Shenyang, China

Abstract—As an important system of China's administrative law, the review system of administrative legality plays an important role in the development of the rule of law in China. The aim of this study is to explore the deficiencies and improvements of the legality review system. This study uses the method of comparative study and introduces the connotation of Chinese administrative behavior legality review system, puts forward the status quo and problems of Chinese legitimacy review system, and draws lessons from the experience of the development of the British judicial review system. The results we obtained demonstrate that perfecting Chinese legitimacy review system should expand objects of reviewing, improve the degree, and increase the basis for the legality review system.

Keywords—Administrative act; Legality review system; British judicial review system; Perfection

I. INTRODUCTION

Administrative act is an important category of administrative law, and the object of administrative reconsideration and administrative litigation. Therefore, the value judgment of administrative act has become one of the important contents of administrative law, which is also the basic function of administrative reconsideration and administrative litigation. It is of great significance to guide administrative organs to correctly exercise administrative power, regulate administrative behavior, settle administrative disputes and protect the lawful rights and interests of administrative counterparts.

Administrative act is a legally meaningful act by organizations that enjoy administrative power and use administrative power[1]. the power of administration is the qualification to perform administrative acts according to law. The organizations that enjoy administrative power mainly contain administrative organs, organizations authorized by laws and regulations and other social organizations. An act of legal significance is an act of exercising the executive power by the subject of administrative power, generating, destroying, changing the relationship of powers and obligations, and being recognized by law.

A. The Connotation of Chinese Administrative Act Legality Review System

Article 6 of Chinese administrative procedure law stipulates, "people's courts try administrative cases and examine whether a specific administrative act is lawful". This is what the legality review of administrative act means. The government's administrative act is tested by whom, whether it is legal, and what standards should be met, are important contents of the administrative act legality review system to explore.

B. Contents of the Legality Review System of Chinese Administrative Act

The principle of review to the legality of specific administrative acts mainly contains three contents, the object of the review, the degree of the review and the basis of the review.

1) Objects of legality review of Chinese administrative act

The object of review is mainly the specific administrative act of the administrative subject, rather than the action of the administrative counterpart. This is mainly because the dispute between the two parties in the administrative litigation mainly focuses on whether the specific administrative act of the administrative organ is legal. At the same time, Chinese law also shows that abstract administrative acts do not belong to the category of censorship.

2) The degree of legality review of Chinese administrative act

The degree of scrutiny is intended to examine whether administrative action is legal or not. The administrative procedure law of China clearly stipulates the standards for people's courts to examine the legality of specific administrative acts. It stipulates the legality of the examination of specific administrative acts by the people's court in administrative proceedings, including, the review of whether the subject of specific administrative acts is legal, to review the legality of evidence, to review of the correctness of applicable laws and regulations, to review the legality of

administrative procedures for specific administrative acts, to review the specific administrative actions for abuse of authority. At the same time, in order to maintain social stability and balance the interests of both parties as far as possible, the administrative procedure law also stipulates that the people's court has the right to conduct reasonableness review on "obvious and unjust administrative penalty", which can be said to be an exception to the principle of legality review in Chinese administrative litigation.

3) Basis for reviewing the legality of administrative actions in China

The basis for Chinese legality review is the basis for the trial and judgment of administrative actions by the people's courts in the trial of administrative cases[2]. According to article 63 of Chinese administrative procedural law, the court's case is judged according to the law, namely the law, administrative regulations, local regulations, autonomous regulations and separate regulations formulated by the National People's Congress and its standing committee, and the people's courts can refer to applicable regulations.

II. STATUS QUO AND PROBLEMS

Chinese constitution does not stipulate the constitutional principle of separation and checks and balances of three powers adopted by western countries, but it clearly stipulates that the relationship between state organs is, "to be divided into responsibilities, cooperate with each other and restrict each other"[3]. Therefore, various state powers in China also have mutual division of labor and mutual restriction.

A. Status Quo of the Legality Review System of Administrative Act in China

Based on the above, the current status of Chinese administrative act legality review system can be understood as the relationship between judicial power and executive power. There are mainly two kinds of relations between them. First, they are two kinds of state power with different natures. Second, they restrict each other[4]. However, in fact, judicial power and administrative power both have operational difficulties. First of all, the judicial power is difficult to effectively implement for the restriction of the administrative power effectively and reasonably, it mainly displays in the following such a dilemma, on the one hand, the scope of the judicial review of administrative actions is expanding. On the other hand, the court's review is only superficial and courts are unwilling or unable to handle a lot of substantive issues, which reduces the public's trust in the judicial authority. What's more, executive power is in an equally difficult position. On the one hand, China is currently in a transition period, and the expansion of political power in the future is inevitable. On the other hand, as the goal of governing the country by law and building a socialist country under the rule of law is put forward and the administration by law becomes an inevitable requirement. The important point of administration according to law is that all government activities must be authorized by laws and regulations. However, due to the relative lag of legislation in practice, many aspects show the phenomenon of insufficient authorization, which makes the administrative organ dare not to do because it is not authorized.

B. Problems in the Legality Review System of Administrative Act in China

1) The object of legality review of administrative act is relatively simple

The types of administrative acts are diverse, and even the same administrative acts have different reviews of their different problems and aspects. The complexity of the objects of review determines that the review benchmark must also be diversified. If a single judicial review is applied to examine all administrative and administrative actions, it is no different from using a ruler of the same scale to measure the distance between the stars in the macro world and the distance between the atoms in the micro world, which obviously goes against formal reason [5]. Chinese "administrative procedural law" does not distinguish between different types of administrative act, nor to distinguish the different problems of administrative behavior is primarily a question of fact and law. It also stipulates that all review objects shall apply the review criteria determined in Article 54, which is the same mistake as the above example. Obviously it does not comply with the provisions of the administrative litigation objective actual needs.

2) The degree of examination is mainly based on legality, ignoring reasonableness review

According to article 6 of the current administrative procedure law, the main reason for this situation is that, "the people's court reviews administrative cases and reviews whether specific administrative acts are legal". The wording of this article tends to make people think that the court only examines the legality of administrative act, but ignores the reasonableness review. At present, although Chinese administrative law have improved on the legitimacy review, it still indistinct definition to the concept of rationality and the court ruled in the understanding of law also has a great deal of fuzziness, merely with the aid of legal principles of judgment [6]. Additionally, China emphasizes judicial efficiency, lower cost, being easy to cause unfair judgment, and often infringing on the interests of the administrative counterparts.

3) Lack of review basis

In Chinese current practice, administrative organs often make administrative acts based on administrative practices, or firstly formulate corresponding normative documents, and then make administrative acts according to the normative documents. Although when the court is examining an administrative act, it has the power to examine whether the regulations and the following normative documents made by the administrative organ conflict the principle of legal reservation and are in conflict with the superior law, if they conflict, they will not be applied. However, due to the limitations of the law itself, such as blank or hysteresis, the normative documents made by administrative organs may lack the upper law that can be followed, or the rules of the upper law are too general, resulting in legal loopholes. However, in the absence of express provisions in the law, Chinese courts usually refuse to accept and dismiss the lawsuit, which makes it difficult for administrative counterparts to protect their rights, which greatly undermines the stability of Chinese administrative rule of law.

III. SUGGESTIONS

The civil law system and the common law system are two important branches in the history of legal development, which have a significant impact on the development of world law. China and Britain belong to the continental law system and the common law system respectively. In terms of administrative act review system, from a theoretical perspective, the legitimacy review system of China is similar to the judicial review system of Britain[7]. In the author's opinion, some Chinese laws are transplanted from the west, so the study of judicial review system should be traced back to the source. Therefore, the study of judicial review system should be based on the typical representative state hands. Therefore, Chinese legality review can be used for reference to the British judicial review system, mainly including the following aspects.

A. Expand the Objects of Reviewing the Legality of Administrative Acts

Compared with British judicial review system and the system of Chinese legality review object group is small, which makes it hard for the interests of the administrative relative person fully safeguard, therefore, we should not only for review to the external cause the rights and duties in the relationship between administrative subject and administrative counterparts changes in the specific administrative act, first of all, should also pay attention to the abstract administrative behavior, such as administrative review of normative documents. For example, the review of administrative normative documents. Taking the review of administrative normative documents as an example, it mainly refers to the standardization of administrative normative documents formulated by administrative organs at all levels from functions and powers, procedures to rights and obligations, contents to forms, and through legislation. In form, it belongs to the category of abstract administrative act, but in essence, the implementation of specific administrative act needs to be based on administrative normative documents. Therefore, even if it has the dual characteristics of abstract administrative act and specific administrative act, it cannot be forgotten in the legitimacy review of administrative act. Secondly, we should also pay attention to lawful administrative misconduct. The third paragraph of article 12 of the administrative procedure law amended in 2018 provides that, when applying for administrative license, the administrative organ refuses to reply or fails to do so within the legal time limit, or refuses to accept other decisions on administrative license made by the administrative organ; Therefore, the legislator paid attention to the harm of administrative omission in the revision and included it into the scope of administrative litigation. In addition, we should also pay attention to the act of administrative fact, that is, the act of the administrative subject is not legally binding, but is implemented to influence or change the state of fact. Although the act of administrative fact is not legally binding, it is still caused by the administrative subject exercising administrative power and should be borne by the administrative subject.

B. Improve the Degree of Legality Review of Administrative Acts

The principle of legality review in China still focuses on legality as the degree and standard of review. Compared with the British judicial review system, it is not conducive to guaranteeing the interests of administrative counterparts. The principle of legality review is a review of the legality of administrative organs[8]. As is known to all, the power of Chinese administrative and judicial organs comes from the people's congress. The legality review of administrative act is the constraint that the judicial organ makes on the administrative act based on the law. However, according to the theoretical basis of "legality is not necessarily reasonable", the judicial organ should grant judicial immunity to certain administrative acts during the review. Therefore, in order to guarantee administrative work and efficiency, to promote the vitality of government administration. The author believes that the review should be based on legality and use the principle of rationality within a certain scope, and should consider whether to violate the public order, good custom and the principle of proportion, etc., such as the procedural legality of administrative act, but it actually infringes the interests of the administrative counterpart, resulting in obvious inequity.

C. Increase the Basis for the Legality Review of Administrative Acts

The British judicial review system takes the principle of over-authority and invalidation as the core of the review principle, which runs through the review process. In the same way, the basis of the English court trial is also based on the principle of over-authority and nullity. Its principle aim is to protect the legal rights and interests of administrative counterparts. In China, the purpose of legality review is to reduce the number of administrative litigation cases, thus weakening the protection of administrative counterparts. However, in China, administrative counterparts are in a vulnerable group, and the administrative litigation law and other related laws are not complete, which will easily result in the infringement of the interests of administrative counterparts. Therefore, the author believes that the legal principle and spirit of "protecting the interests of administrative counterparts" should be introduced to guide the court's trial.

IV. CONCLUSION

Since the establishment of the legal review system for administrative acts, the process of legal construction in China has been accelerating. This article only express personal time, mainly in order to protect the administrative relative person's interests as the core, introduces and compares the Chinese and British about judicial power intervention in the field of administrative review system, to draw lessons from the advantages of judicial review system, object from the review, review, review on the basis of constantly improve the system of legitimacy review three angles. With the acceleration of the process of comprehensive rule of law, the review system of legality of administrative acts should adapt to the pace of The Times.

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Name: Wang Long-yu, Tel: 18842375460, Address: H001, School of Humanities and Law, No. 195, Innovation Road, Shenyang Street, Hunnan District, Shenyang, Liaoning, P.R.China. E-mail: WLY20160109@163.com.

Name: Li Han-ke, Tel: 13080878513, Address: H001, School of Humanities and Law, No. 195, Innovation Road, Shenyang Street, Hunnan District, Shenyang, Liaoning, P.R.China. E-mail: lihankemiao@163.com.

Name: Yao Tian-chong, Tel: 13889315599, Address: H001, School of Humanities and Law, No. 195, Innovation Road, Shenyang Street, Hunnan District, Shenyang, Liaoning, P.R.China. E-mail: yaotianchong@sina.com.

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