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On the Rationality Principle of Administrative Litigation in Substantive Resolution of Administrative Disputes

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Abstract: Through the analysis of the administrative second-instance case of Tianchang Aimeiyi Clothing Processing Factory v. Chuzhou Radio, Television, Press and Publication Bureau, when the Anhui Provincial Higher People's Court conducted the second instance of this case, it was mainly the application of the principle of administrative rationality, thereby affecting the administrative penalty behavior and the first-instance judgment was changed. First, the author elaborates on the general theory of the principle of administrative rationality. The connotation of the principle of administrative rationality is mainly expressed as the principle of administrative fairness and justice, the principle of considering relevant factors and the principle of proportionality. Secondly, the author elaborates on the principle of administrative rationality based on this case and relevant practice. The actual situation mainly includes the obvious inappropriateness of discretionary administrative actions and the lack of application of change judgments; thirdly, the analysis of the current causes of the principle of administrative rationality mainly includes two aspects: administrative efficiency and responsibility and the use of judicial change power; finally, the administrative rationality principle The practical application of sexual principles puts forward corresponding suggestions for improvement.

Keywords: The Principle of Administrative Rationality; The Actual Situation; The Causes of the Current Situation; Suggestions for Improvement.

1. General Theory

The principle of administrative rationality means that when administrative subjects make discretionary administrative actions, they must conform to the normal rationality of the general public and be able to comply with scientific axioms and social morality. The principle of administrative rationality belongs to the category of substantive rule of law, which allows administrative subjects to have a large amount of discretionary power. In order to control the discretionary power of administrative subjects, the connotation of the principle of administrative rationality mainly includes the principle of administrative fairness and justice, the principle of considering relevant factors and the principle of proportionality.

1.1. Administrative Fairness and Justice Principle

The principle of administrative fairness and justice means that administrative subjects act fairly and without partiality, and treat administrative counterparts of different genders, nationalities, identities and religious beliefs equally when making administrative actions. Equality is substantive equality. To achieve substantive equality, we need to treat people equally under the same circumstances and treat people differently under different circumstances. Article 33 of the Constitution clearly stipulates that all citizens of the People's Republic of China are equal before the law, and the principle of administrative fairness and justice is the specific application of the constitutional principle of equality in the field of administrative law.

1.2. Consider Relevant Factors

The principle of considering relevant factors means that administrative subjects must fully consider relevant factors when making administrative actions, and must not make arbitrary or arbitrary administrative actions, and administrative subjects must not take irrelevant factors into account when making administrative actions. The so-called "relevant factors" include the conditions stipulated in laws and regulations, policy requirements, social justice standards, and the positive or negative effects that may arise from a person's personal situation and behavior. In this case, the administrative penalty imposed by the administrative subject and the judgment of the court of first instance did not take into account relevant factors, resulting in an imbalance between the penalty and the judgment.

1.3. Proportionality

The principle of proportionality is a consideration of ends and means between state power and civil liberties. It is a subordinate principle of the principle of administrative rationality. The principle of proportionality can be described as an imperial clause among the basic principles of administrative law, which mainly regulates discretionary administrative actions. The connotation of the principle of proportionality is divided into three levels: first, the administrative subject should conform to the purpose of public interest when exercising discretionary administrative actions; second, there is legitimacy between the measures and means adopted by the administrative subject and the results, that is, the measures and the means can achieve the purpose; thirdly, when the administrative subject can adopt a variety of measures and means to achieve a certain purpose, the measures and means that will cause the least damage to the rights and interests of the administrative counterpart should be adopted.

2. Reality

The application of the principle of administrative rationality is mainly reflected in the discretionary administrative actions implemented by administrative subjects. Some legal facts are difficult to make unified provisions in legal norms. This requires specific analysis of the specific situation of administrative subjects and deciding legal norms based on actual legal facts. The application of the principle of administrative rationality restricts the administrative actions taken by administrative subjects. The actual situation of the principle of administrative rationality will be analyzed from the following aspects based on this case.

2.1. Discretionary Administrative Actions are Obviously Inappropriate

Based on the standard of the extent to which administrative subjects are bound by the norms of administrative law when performing administrative acts, administrative acts are divided into restrictive administrative acts and discretionary administrative acts. Discretionary administrative actions refer to specific administrative actions in which legal norms give administrative subjects room to flexibly handle the scope, conditions, standards, methods, means, etc. of administrative actions based on actual circumstances. In layman's terms, legal norms have loose restrictions on administrative subjects. Administrative subjects have a lot of flexibility in applying legal norms. Administrative subjects can freely choose whether to do something or not and the amount of punishment. The distinction between disciplinary administrative actions and discretionary administrative actions is not mutually exclusive. Regulatory administrative actions also contain a certain element of discretion, such as a fine of 200 yuan to 500 yuan. Administrative entities can choose within this range based on some relevant factors. Any specific amount. Since the legal restrictions on discretionary administrative actions are loose, the subject of action needs to make a decision based on the actual situation. In practice, administrative subjects often consider whether the discretionary administrative action is reasonable from the perspective of the administrative subject itself, rather than from the perspective of the administrative counterpart. The discretionary administrative action is reasonable, so it often results in the administrative subject's discretionary administrative action being obviously inappropriate.

In the second instance of this case, the original administrative penalty decision and the first-instance judgment failed to reasonably determine the scope and amount of the administrative penalty based on the principle of proportionality. The Anhui Provincial Higher People's Court used the principle of administrative rationality to determine the discretionary power of the Chuzhou Radio, Television, Press and Publication Bureau. The exercise was fully demonstrated and the original administrative penalty decision and the first-instance judgment were negated. First, Tianchang Aimeiyi Clothing Processing Factory is only a part of the copying process. The infringement fault is relatively minor. The processing cost is 3.5 yuan. Using the market price of 15.11 yuan to calculate the turnover income completely attributes the infringement liability to Tianchang Aimeiyi Clothing Processing Factory. The factory also imposed an administrative penalty, which was obviously inappropriate and violated the principle of proportionality in the principle of administrative rationality; secondly, when making the original administrative penalty and the first-instance judgment, the facts were unclear and the aggravating circumstances were not fully considered. The second-instance court found that the copyright Li Ruisong did not directly request Tianchang Aimeiyi Clothing Processing Factory to stop producing infringing toys. However, when the administrative body imposed administrative penalties, it believed that it was "ignoring the right holder's request to stop infringement, and the subjective intention was obvious." Pay attention to the circumstances.

2.2. Modification of Judgment is Less Applicable

Judgment modification in administrative litigation means that the people's court directly makes a judgment to change the original administrative act based on the facts of the case determined during the trial. According to the provisions of Article 77 of the Administrative Litigation Law, a change of judgment means that after a court trial, it is determined that the administrative penalty imposed by the administrative subject is obviously inappropriate, or other administrative actions taken by the administrative subject involve the determination of the amount, determination and confirmation of the amount. If there is an error, the court can directly make a judgment to change the administrative action. The "Administrative Litigation Law" stipulates two applicable situations for modifying judgments: first, the administrative penalty imposed by the administrative subject is obviously inappropriate; second, other administrative actions made by the administrative subject involve the determination and determination of the amount of money. The "State Compensation Law" also stipulates an applicable situation for modifying the judgment, that is, if a compensation claimant and the agency responsible for compensation have a dispute over compensation and bring it to court, the court may modify the judgment in accordance with the compensation standards stipulated in the "State Compensation Law".

The judgment of change directly replaces the administrative judgment by the court's judgment, so it helps to resolve disputes, improve the efficiency and effectiveness of rights remedies, and can avoid the consequences of illegal redoing or indolence of administrative agencies to redo the action after the court has made a decision to revoke the accused behavior. "Second damage". Changing the judgment means that the court has done the work of the administrative body, that is, the judicial power has done the work of the administrative power. In view of the distinction between judicial power and administrative power, the scope of application of the changed judgment cannot be too large. In this case, the Anhui Provincial Higher People's Court directly made a modified judgment. Firstly, the facts of the administrative penalty in this case were clear, and the administrative penalty was obviously inappropriate due to an error in the application of the law by the administrative subject. Secondly, in order to reduce the burden of litigation for the parties and improve administrative efficiency, the court Timely resolution of administrative disputes embodies justice for the people.

3. Causes

This article analyzes the current situation and causes of the principle of administrative rationality based on the second instance administrative case of Tianchang Aimeiyi Clothing

Processing Factory v. Chuzhou Radio, Television, Press and Publication Bureau and the practical situation. First, administrative subjects consider administrative efficiency and administrative responsibilities when making administrative actions; second, the power of judicial change is an override of administrative power, and special attention should be paid when applying it.

3.1. Administrative Efficiency and Responsibility

It can be said that the principle of administrative rationality is rarely considered by administrative subjects when making administrative actions. The main considerations are factors such as whether it is legal and whether it complies with procedures expressly stipulated in legal regulations. On the one hand, the principle of administrative rationality requires reference to many elements. When administrative subjects make administrative actions, they omit reference to the elements of the principle of administrative rationality in order to pursue administrative efficiency; on the other hand, when administrative subjects make administrative actions, their behavior conforms to the substantive elements and procedural elements of legal norms mean that administrative actions are legal, so the administrative subjects have very little responsibility.

The court of first instance held that the focus of the dispute in this case was: whether the administrative penalty decision made by the Chuzhou Radio, Television, Press and Publication Bureau was legal, that is, whether the facts considered in the administrative penalty decision were clear, whether the procedures were legal, whether the applicable law was correct, and whether the punishment was appropriate. The court of first instance only reviewed the legality of the administrative action, but did not review the rationality of the administrative action.

3.2. Application of Judicial Change Power

According to the theory of separation of powers and checks and balances, there are clear boundaries between judicial power and administrative power. They are independent and do not interfere with each other. To change the judgment, the judicial organs directly issue orders on behalf of the administrative subjects. For judges, there is a suspicion that judicial power has overstepped administrative power, and judges should try to avoid applying changes to judgments. In addition, the applicability of “clearly inappropriate” in changing judgments is not strong. On the one hand, the concept of "clearly inappropriate" has always been controversial in academic circles. Some scholars believe that "obviously inappropriate" means that although administrative penalties are not illegal in form, they are contrary to the spirit of the law and have caused damage to the legitimate rights and interests of others, thus showing obvious unreasonableness. Some scholars also pointed out that the characteristic of "obviously inappropriate" is that although the administrative behavior is legal in form, it actually violates the inherent value pursuit of the law itself. However, because the relevant laws do not explain the connotation of "obviously inappropriate" , the judge inevitably creates problems that are difficult to grasp when applying it, so he avoids applying it.

4. Improve Suggestions

We put forward corresponding improvement suggestions for the practical application of the principle of administrative rationality, mainly including: first, increase the awareness of responsibility of administrative subjects, and administrative subjects must dare to take responsibility to make the administrative actions taken legal and reasonable; second, standardize the principle of administrative rationality Third, strengthen the application of the principle of administrative rationality to ensure that the administrative actions can withstand the test.

4.1. Increase Administrative Subject’s Awareness of Responsibility

When making administrative actions, the administrative subject must not only review whether the administrative actions are legal, but also whether the administrative actions are reasonable. It is necessary to increase the awareness of responsibility of the administrative subjects so that the administrative actions taken by the administrative subjects are legal and reasonable. The legality of the administrative actions taken by the administrative subjects is not a reason for the administrative subjects to be exempted from liability. The administrative actions taken by the administrative subjects must also be reasonable. Some grassroots administrative subjects believe that rationality cannot be measured by accurate standards, but legality can be accurately measured. In order not to bear corresponding responsibilities, the administrative actions taken are only legal and unreasonable. Therefore, it is necessary to strengthen the sense of responsibility and make administrative The administrative actions taken by the subject are legal and reasonable.

4.2. Standards for the Application of the Principle of Administrative Rationality

Before exercising administrative power and taking administrative actions, administrative subjects must weigh the measures taken, the benefits obtained, and the harm caused to people. That is to say, when administrative subjects exercise administrative discretion, they need to compare and weigh various conflicting interests to consider the interests of the majority as much as possible, pay attention to protecting the interests of the minority, and avoid granting benefits to the majority at the expense of the interests of the minority. Situations of being ignored or violated. Unlike the specific and clear legal rules, legal principles are often abstract and vague. The application of the principle of proportionality in hearing cases puts forward higher requirements for the professionalism of judges. This requires improving the professionalism and professionalism of judges in order to correctly judge cases. Standardize the application of the principle of administrative rationality.

4.3. Strengthen the Argumentation and Reasoning of the Principle of Administrative Rationality

Administrative actions taken by administrative subjects must comply with legal provisions and have sufficient factual basis. It is necessary to provide theoretical evidence for administrative actions taken using administrative discretion to make the people more convinced. In the process of performing their duties and powers, administrative subjects should actively accept supervision from the masses, society

and relevant departments to enhance the public's sense of identity. When courts apply legal principles to hear cases, they must also fully reason their cases so that they are more convincing, reasonable and logical than applying legal rules.

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