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Research on the Issue of Administrative Agreement

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Abstract: The system of administrative agreement is one of the important means of contemporary public administration. It is the integration of administrative power and contract spirt. The difference between administrative agreement and other administrative means is that the state can make the public administration objectives more specific in the form of administrative agreement, and tend to be legal, and stipulate the specific rights and obligations of both parties in the form of contract. The advantage of administrative agreement lies in the integration of right elements and contract spirit. Firstly, administrative agreement is an agreement reached by administrative organ and administrative counterpart through reasonable discussion; secondly, as the parties to the agreement, the administrative subject still maintains its original credibility to ensure the realization of its administrative purpose. Through the protection of the administrative agreement system, it is helpful to clarify the rights and obligations of both parties to the agreement, ensure the realization of the administrative objectives, and solve the problems. Based on the analysis of the problems existing in the current administrative agreement system, this paper proposes to standardize the scope of administrative agreement by administrative procedure, clarify the scope of administrative agreement and civil agreement by judicial interpretation, and restrict the exercise of priority, hoping to realize the value orientation of administrative agreement and protect the interests of the people through the above measures.

Keywords: Administrative agreement, Scope of administrative agreement, Exercise of priority.

1. Introduction

Administrative agreements occupy an important place in modern administrative law and play a great role in its effectiveness. We have to understand the administrative agreement system on the basis of, reflect on the current administrative agreement litigation system in China in the current practical life of the application of the situation. As the administrative agreement, the administrative organ can only through the administrative subject identity, but not by virtue of the civil legal person identity and administrative counterparts to sign an agreement on civil rights and obligations, so the two sides in the status of inequality, so through the study of this subject, hope to better solve the existing problems, to protect the public interest.

2. Overview of Administrative Agreements

2.1. The Basic Concept of Administrative Agreement

An administrative agreement, also known as an administrative contract, is an agreement between an administrative subject and its counterparts through a coordinated agreement aimed at achieving administrative objectives. With the widespread use of administrative agreements in China in recent years, there has been a basic consensus in the country about the basic nature of administrative agreements, i.e. what most administrative law scholars believe, that administrative agreements have the following two attributes in the vast majority of cases: one is administrative in nature and the other is contractual in the civil law sense. The administrative agreement, in the form of an agreement between the parties, fixes the administrative objectives that the state wants to achieve, and helps the administrative subject to achieve its administrative objectives and perform its functions by protecting the smooth conduct of the contractual ground through the law and mobilising the administrative counterpart (the contractual counterpart). Moreover, at the level of state governance, administrative agreements are also the practical expression of the contractual system. Therefore, administrative agreements are an organic combination of public law rules and private law rules, and by their nature they always have the dual attributes of being "administrative" and "contractual". In Professor Jiang Ming'an's view on the basic connotation of administrative agreements, he emphasised the balance between administrative acts and civil contracts, which is actually an acknowledgement of the dual attributes of administrative agreements as "administrative" and "contractual". [1] An administrative agreement has the following elements: firstly, one of the parties must be an administrative organ, and the administrative organ and the administrative counterpart must reach a consensus to conclude the agreement; secondly, the purpose of the administrative agreement is to better carry out administrative services and management and safeguard the public interest; then, in the administrative agreement, the rights and obligations of the parties are specified in accordance with the requirements of the administrative regulations; finally, the administrative agreement is based on the formation of a contract between the parties. The administrative agreement is based on the formation of a consensual agreement between the parties. In an administrative agreement, the administrative authority enters into an administrative agreement with the administrative counterpart in the capacity of an administrative subject in order to achieve administrative management and public services, and the administrative subject enjoys the right of administrative preference during the execution period of the contract.

2.2. Characteristics of Administrative Agreements

First, the administrative agreement is an agreement signed by the administrative organ in the capacity of administrative subject, which itself has the power of administrative management. The administrative agreement is signed in order to help the administrative organ to better implement the announcement service, therefore, the administrative organ in the administrative agreement of the subject status is indisputable. [2] The administrative organ is not only an administrative subject or a civil subject, the administrative organ can also act as a civil subject to reach an agreement, just like going to a bookstore to buy some books class office supplies, the agreement is in line with the civil agreement. So in the administrative agreement, the identity of the administrative subject is crucial, the identity of the administrative subject determines the nature of the agreement.

Secondly, the purpose of the administrative agreement concluded between the administrative organ and the administrative counterpart is to safeguard the public interest and achieve the administrative objectives. On the other hand, the administrative agreement is concluded out of public interest for the benefit of the people, so the administrative agreement is a manifestation of public interest rather than a tool of private desire. For example, in the case of the construction of roads, bridges, airports and other public utilities, the joint construction and investment agreements signed by government agencies and enterprises are administrative agreements.

Thirdly, in administrative agreements, the parties are not on an equal footing. The administrative authorities have certain administrative preferential rights. This is a major difference between administrative agreements and civil agreements, which are signed for the benefit of the parties themselves. Administrative agreements, on the other hand, have to take into account the interests of the majority of the parties, so that the administrative subjects have the privilege of executing the agreement.

2.3. The Main Institutions of Administrative Agreements

The first is that in the field of litigation the administrative authority can only play the role of the defendant. Due to the unequal status of the two parties, the administrative relative needs a certain power to fight against the administrative right of preference, so in the administrative agreement, it is only the administrative relative who can initiate litigation against the administrative act of the administrative authority. The judicial interpretation also provides that the citizen, legal person or other organisation in dispute over the conclusion, execution, amendment or termination of an administrative agreement is the plaintiff and the administrative organ is the defendant. If the administrative organ (respondent) files a counterclaim against the conclusion, execution, modification or termination of the agreement, the people's court shall not grant it.

The second is the expansion of the scope of the plaintiff. In the process of entering into an administrative agreement, the basic principles of administrative law need to be followed. [3] Because in an administrative agreement, the general administrative organ makes an administrative decision, the decision may involve stakeholders who are not only administrative counterparties, but may also have some influence on the interests of stakeholders other than the parties and, more likely, on the interests of the wider population.

The third is that administrative agreements need to be reviewed for legality. The administrative agreement first needs to review the legality of the signing and implementation process of the administrative agreement, and the specific content of the agreement should also be reviewed for compliance with laws and regulations, whether there is an ultra vires act, whether the procedures are strictly observed, and whether the obligations are fulfilled in accordance with the law.

3. Problems of Administrative Agreements in China

3.1. The Expansion of The Scope of The Administrative Agreement Is Not Conducive to The Resolution of Disputes

According to Article 12 of the Administrative Procedure Law, the basic requirement of an administrative agreement is a lawsuit filed by an administrative relative against the administrative act of an administrative authority. At the same time, the new judicial interpretation on the scope of administrative agreement in 2019 also stipulates that the administrative agreement can only be a lawsuit filed by the administrative relative against the administrative act of the administrative department when the administrative agreement is litigated. This represents that the judicial interpretation of the Supreme Court also shares such a view. In addition, Article 11 of the Interpretation also stipulates the concept of administrative agreement: an administrative agreement is an agreement signed between an administrative organ and an administrative counterpart stipulating powers and obligations in the administrative field in order to achieve administrative management or public service functions, and Article 12 specifically lists special types of administrative agreements, such as government franchise agreements, agreements on compensation for expropriation and requisition of land, housing, etc., agreements on the grant of mining rights and other state-owned natural resources The agreement on the granting of the right to use, the agreement on the lease and sale of government-invested subsidized housing and the agreement on cooperation between the government and social capital. The vagueness of the criteria for identifying administrative agreements has led to a wide range of types and scope of administrative agreements listed in Article 2, and some civil contracts have also been included in the scope of administrative agreements. This has led to an expansion of the scope of administrative agreements. In addition, the administrative authority cannot bring a counterclaim against an administrative action brought by the administrative counterparty. However, the laws and regulations relating to the administrative agreement system in China have only recently begun to develop and the relevant theory is not yet perfect. Therefore, if the administrative organ violates the administrative agreement during the performance of the administrative agreement, the administrative counterparty can file a lawsuit to the people's court to protect their legitimate rights and interests and request the administrative organ to fulfill the obligations stipulated in the administrative agreement, but if it is difficult to continue the administrative agreement due to the administrative counterparty's violation

of the administrative agreement during the performance of the administrative agreement, the administrative organ cannot file a lawsuit to The administrative authorities cannot remedy the situation by way of litigation. Therefore, the new judicial interpretation of 2019 essentially generalises the content of administrative agreements and therefore puts the conflict between the administrative authorities and the administrative counterparties in a more unfavourable state for resolution.

3.2. Some Famous Agreements Are Not Beyond the Scope of Civil Agreements

The civil agreement is an agreement between two parties on an equal footing in the litigation based on the principle of private law autonomy, which stipulates the rights and obligations of both parties and reaches an agreement on their intention. The administrative agreement is an agreement reached between the administrative organ and the administrative counterpart to achieve the administrative purpose. According to the definition of famous administrative agreements in the new judicial interpretation in 2019, the main ones are: arrangements for compensation for expropriation and requisition of land, housing, etc. This interpretation lists some famous agreements, such as "agreements on the granting of the right to use state-owned natural resources such as mining rights" and "agreements on the lease, sale and purchase of government-invested subsidised housing", which are all civil agreements in nature, which means that they all These agreements are civil in nature, which means that they all fall within the scope of civil agreements. [6] Administrative subjects and market subjects are not ordinary civil subjects, so the definition of their scope of application must be clear and cannot be further expanded, otherwise it will cover civil agreements.

There has also been a problem in China of administrative agreements being regarded as civil or economic agreements, which is tantamount to allowing the administrative authorities to give up their special rights in the agreement. By not providing the necessary supervision, inspection and policing of administrative agreements, the administrative authorities allow the other party to do whatever it wants in the course of fulfilling the agreement, which can lead to damage to the interests of the state. [7] To give a concrete example, when signing an administrative agreement, the administrative organ does not strictly check the conditions and capabilities required of the administrative counterpart under the agreement, but easily believes the verbal promises made by the other party and signs the agreement with it without timely information verification, and does not do its duty of supervision and inspection in the process of performing the administrative agreement, which eventually leads to the failure to continue to perform the agreement, and the existence of these problems seriously The existence of these problems seriously undermines the interests of the State.

In practice, the boundary between civil agreements and administrative agreements is not very clear, and it is controversial whether administrative agreements are independent of civil agreements. [8] Moreover, in terms of legislation, administrative agreements are in their infancy and there are no sound legal norms and no clear legal standards to distinguish between administrative agreements and civil agreements. Finally, in administrative and judicial practice, it is difficult to protect the legitimate rights and interests of the parties due to the lack of clear rules and mechanisms for resolving disputes over administrative agreements.

3.3. Irregularity in the Exercise of Priority of Administrative Agreements

Along with the change from the unilateral command management approach to the negotiated contract management approach, administrative agreements such as bilateral contracts and settlement contracts have been used in large numbers in law enforcement practice. This type of administrative priority does not require the consent of the parties. But because of this, the risk of such priority is also obvious, as administrative subjects can use administrative priority to make administrative decisions without the knowledge of the administrative parties, or even to change the status of administrative agreements. There is then a great risk that the exercise of administrative priority will be used in such a way that if the administrative organ makes an administrative decision in the interests of the individual or the department, ignoring the public interest, it will deviate from the objectives for which the administrative agreement was concluded, undermine the basic principles of the administrative agreement and further reduce the consensual attributes of the administrative agreement. The administrative organ can take strong measures against the administrative counterpart through its dominant position and make the administrative counterpart make an involuntary expression of meaning, which also undermines the legitimate rights and interests of the administrative counterpart. [9] Make the administrative settlement of the consensual will is replaced by the will of one party, let the administrative settlement of the consensual this is a false name, with the administrative settlement system of the formulation of the starting point. Therefore, the idea of the non-compliant exercise of the priority of the administrative subject in the administrative agreement must be controlled in the administrative agreement

4. Measures to Improve on The Issue of Administrative Agreements

4.1. Administrative Procedures to Regulate the Scope of Administrative Agreements

Because the administrative agreement essentially draws on the spirit of contract in civil law to achieve administrative management, the administrative agreement certainly meets the basic requirements of contract - unanimity of meaning. It also represents an increase in the scope of the rights and freedoms of the administrative counterpart, a reconfiguration of the rights relationship between the parties, and a supervision and check on the administrative authorities by the administrative parties. The effective use of administrative procedures can safeguard the relatively weaker parties in an agreement and achieve the objective of equal consultation. It has become a socially accepted fact that the use of administrative procedures to regulate the special powers possessed by the government actually safeguards the basic rights and interests of citizens. The administrative agreement, on the other hand, as a means of administrative law, is an administrative policy commonly used by administrative authorities in public administration, and its scope is further extended to serve the achievement of administrative purposes.

Proper administrative procedures can regulate the scope of administrative agreements, which means that in order for an administrative agreement to be used, then both parties to the agreement must be appropriately qualified and meet the conditions of an administrative agreement. This is not only a

requirement for the government. It is also a requirement for the administrative counterpart. According to the relevant provisions of the law, in addition to state secrets and matters relating to commercial secrets protected by law, personal private information, other situations that may occur in the course of the administrative authority's administrative powers should be transparent, disclosed to the outside world in a timely manner, and the views of citizens, legal persons and other organisations should be heard; then the administrative counterpart is required to have a certain understanding of the administrative work and even have The parties to the administrative agreement are obliged to follow the legal procedures and avoid the expansion of the scope of the administrative counterparty. The administrative procedure protects the right of the administrative counterpart to monitor the performance of the administrative agreement and the right to self-remedy. On the one hand, administrative procedures can regulate the administrative behaviour of administrative subjects, and on the other hand, the corresponding obligations of citizens can be supervised by administrative procedures. The administrative procedure law allows citizens and the state judicial organs to effectively regulate the performance of administrative agreements and the use of administrative preferences by setting up systems for accepting supervision and stating reasons, so that every move of the administrative subject and the administrative counterpart can be monitored by the public, which means that in order to use an administrative agreement, both parties must meet the conditions of the administrative contract, operate under the supervision of the public system, and put the administrative This means that administrative procedures are essential for the effective exercise of administrative power and the fulfilment of the administrative counterpart's obligations under the agreement, and that they raise the threshold for the application of administrative agreements.

Proper administrative procedures can be an inspector of administrative acts and an umbrella for the interests of the people. In our practice of administrative agreements, it can be seen that most administrative authorities make mistakes in the performance of administrative agreements, mainly because the necessary procedures are not strictly followed. If the administrative authorities, in fulfilling administrative agreements and exercising their administrative rights, adhere to the requirements of administrative procedures, take the protection of the people's interests as the starting point, serve the people as the purpose, uphold a fair and rigorous attitude, listen more, read more and think more, they can take fewer detours and avoid wrong decisions. It is often difficult to identify the correctness of an administrative agreement through the content or provisions of the administrative agreement itself, so it is necessary to rely more on the content of administrative procedures to help us judge the correctness of the administrative agreement. Furthermore, as administrative agreements involve both the executive and the general democracy, the administrative actions of government departments are not only to achieve administrative objectives, but also to establish and maintain the prestige of the government. The government departments can better achieve their administrative objectives through administrative agreements, and at the same time they have to mainly protect the public's trust in the government. Therefore, the standard performance of administrative procedures can make the public appreciate the openness and transparency of the government's work, enhance the credibility of the government's work and guarantee the smooth performance of administrative agreements. Moreover, strict adherence to administrative procedures can increase the public's enthusiasm for participation, thus reducing the public's questions and objections to administrative decisions and reducing disputes and conflicts in the implementation of administrative agreements. [10] In short, due process can help maintain the credibility of the administrative organs and the legitimacy of the whole system.

4.2. Judicial Interpretation to Clarify the Scope of Administrative Agreements and Civil Agreements

In order to make it more convenient for the parties to file administrative agreement lawsuits, the judicial interpretation is based on the relevant provisions of the administrative litigation law, the different types of administrative agreement lawsuits to distinguish to ensure that in the field of administrative litigation, the administrative counterparty can effectively defend their legitimate claims. A civil contract is an agreement between equal subjects to establish, modify and terminate civil rights and obligations. An administrative contract is an agreement between an administrative subject and its administrative counterpart, which stipulates the rights and obligations under administrative law in order to achieve the administrative objectives. The ability to safeguard and realise individual or collective interests is the objective of the conclusion of a civil agreement, and interests are an important factor in the change of civil legal relations.

The legal status of the administrative subject of the administrative agreement and the administrative counterpart in the administrative agreement is not in a state of equality, the administrative subject is in a higher position. In contrast, the rights and obligations of the two parties in the civil agreement are equal and neither party has overriding power. The judicial interpretation also provides for different arbitration procedures for administrative agreements because of their special nature: because the subject of an administrative agreement has administrative superiority, it means that the administrative subject can independently make administrative decisions, and in the process of implementing the decisions, there may be serious infringement of the interests of the state and the public, and the administrative relator can bring this act to the court for a ruling, and the people's court, after hearing, considers that the administrative The people's court, after hearing the claim of the administrative relator, shall consider the administrative act invalid; and the administrative subject may make changes or terminate the administrative agreement without forming a consensus with the administrative relator, and if it causes losses to the administrative relator, the administrative organ shall compensate the administrative relator for the losses. And in the litigation process of civil agreement, the court protects the means for both parties to exercise their litigation rights equally, at the same time, the people's court stands in a neutral position, upholds the principle of fairness, treats both parties equally and protects both parties to exercise their litigation rights. It is usually the injured party whose losses are borne by the party at fault.

The administrative subject has the special right to exercise the right of administrative preference and the People's Court may decide to continue to enforce this agreement and take remedial measures when the administrative act is unlawful.

The defendant was ordered to compensate the plaintiff for the damages. The purpose of the judicial interpretation is to strengthen the integrity of the government and to ensure that the administrative authorities protect the interests of the people in accordance with the principles of administration. [11] In addition, the judicial interpretation, in accordance with the provisions of the Administrative Procedure Law, effectively protects the legitimate rights and interests of all types of economic development, while all types of economic subjects are able to achieve fair competition in the market, chosen by the market, and the law creates a good market environment for them. The two parties to the civil agreement have equal status and enjoy equal litigation rights, regardless of whether the two parties are different litigation subjects, or whether their social status, the rights they possess or their financial resources are different, they all have equal litigation rights in the litigation, and there is no preferential right at all.

According to the new judicial interpretation issued in 2019, if a citizen, legal person or other organisation does not fulfil its obligations under the agreement and still fails to do so after a reminder, the administrative organ may apply to the people's court for compulsory enforcement in accordance with the law and make a ruling in writing. When a citizen, legal person or other organisation receives a written decision and still fails to apply for administrative reconsideration or institute administrative proceedings within the legal deadline, and fails to fulfil the obligations stipulated in the content of the agreement, if the agreement can be realised through compulsory measures, then the administrative subject may apply to the judicial organ for compulsory enforcement to achieve the purpose of administrative management. It first establishes the legality of the administrative organ in dealing with the dispute in the first place, i.e. it first requires a reminder from the administrative organ for the purpose of prior notice, followed by a decision in writing to fulfil the obligations of the agreement and to submit an application for enforcement to the court within the time interval prescribed by law. [12] However, the procedure of public notice in civil agreements refers to the fact that in the event of theft, loss or extinction of the note holder's note, the People's Court, on the basis of the application of the party concerned, will, by means of public notice, require the interested party to declare his or her loss to the court within the time interval prescribed by law in order to safeguard his or her legal rights, and if no declaration is made after the legal time interval, the request filed by the applicant will be If no declaration is made after the legal deadline, the relevant decision will be made on the basis of the claim filed by the applicant, in accordance with the law. In the case of both types of agreement, the purpose is to achieve a notification and supervision function, but the purpose is different. The reminder in the administrative agreement is intended to urge the administrative counterpart to fulfil its obligations under the administrative agreement; whereas the reminder procedure in the sense of the civil agreement is intended to deal with two urgent issues: the first is the removal of the right, i.e. the release of the power originally set on the instrument; the second is the confirmation of the right, i.e. the granting of the new applicant's right to The second is to confirm the right, i.e. to give the new applicant the right to the bill of exchange.

5. Conclusion

With the development of society, administrative agreements are widely used in government management and services, innovating the government management system and methods, and also promoting the development of social economy bringing great convenience. As an administrative agreement is a complex matter of both administrative and contractual nature, the relative lack of judicial interpretation of relevant laws and regulations has brought about a lot of inconvenience and disputes. In view of this situation, it needs to be improved in the future judicial practice. In judicial practice, on the one hand, we must resolutely avoid the civilisation of administrative agreements, blurring the concept of both and confusing the role of both. This will lead to difficulties in achieving administrative purposes, and simply mixing administrative acts with civil acts is irresponsible to both parties; on the other hand, judges should be given moderate discretionary power to guarantee a certain flexibility in judicial trials; citizens should be given a certain right of confrontation to protect their legitimate rights and interests. It is also possible to borrow administrative procedures to regulate the operation of power and better promote the application of administrative agreements in social management.

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