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Analysis on the Functions of Administrative Law Enforcement Interpretation in China¹

ANALYSES FONCTIONNELLES SUR L'APPLIATION DU DROIT EN CHINE

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Abstract: The process of administrative law's application is also the process of its interpretation. Administrative law enforcement interpretation has the functions of standardize administrative law enforcement, promote the development of the law, make up the bugs of law and other functions. These functions complement and supplement each other.

Key words: administrative law enforcement; legal interpretation; Functional Analysis

Résumé: Le processus de la pratique du droit administratif est celui de l'application du droit administratif. L'application du droit administratif a plusieurs fonctions, telles que la normalisation de l'application du droit administratif, la promotion du développement de la loi et la réparation des failles de la loi. Ces fonctions se complètent mutuellement.

Mots-Clés: application du droit administrative; interprétation juridique; analyses fonctionnelles

The enactment of the law is to apply it. If the purpose of making the law is not to apply, then the purpose has gone. In administrative law, because of the diversity of its source, the complex of its content and structure, and the multi-level of its application, the process of administrative law's application is very complex. The application of administrative law needs the help of interpretation to communicate the rules of the law with the facts of the case and form an effective conclusion. In the process of applying administrative law, interpretation plays a big role in connecting rules with the facts, and the value of legal norms with the conclusion of the case. Interpretation is the basic thinking and cognitive tool for the law executors to form the conclusions. The process of administrative law's application is also the process of its interpretation. Each administrative law norms has a certain degree of abstraction, if you want to use it in concrete administrative things, you have to interpret it. Administrative law interpretation is the

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bridge to connect administrative law norms with its application (ZHOU You-yong, 2009).

U.S. scholars Parsons said: 'Interpretation function is the core function of the legal system.' (Legal Theory and Common Law, ed. W. Twining, 1986) Administrative law enforcement interpretation has three functions: standardize administrative law enforcement, promote the development of the law, and make up the bugs of law. It should be noted that each of these three functions are not separated and independent, but rather complement and supplement each other, these three functions are combined as an entity. In the specific practice, they focus on different aspects, but there is no essential difference.

1. STANDARDIZE ADMINISTRATIVE LAW ENFORCEMENT

1.1 To confirm the exact meaning of the provisions and regulations

If the meaning of the words and expressions used in the provisions and regulations are unknown or they may lead to different explanations, it is necessary to use interpretation method to quest and confirm their true meanings to be followed. The law does not focus on the character itself, it should be interpreted in its intrinsic meaning which may result in unreasonable conclusions. At the same time, the law is not barren theory, we should not persist in useless theory so that affect the effect of the law application (ZHANG Jia-yang & CHEN Zhi-hua, 1993). The thirteenth article of <Railway Law of the People's Republic of China> says: "The railway transportation enterprises should take effective measures to ensure good transportation service, providing boiled drinking water." It says clearly in the law "providing boiled drinking water", but it doesn't say it is free. If the meaning of the law is to provide boiled drinking water for free, they should add the word free to it. According to the context interpretation, the key word of the expression "providing boiled drinking water" is providing. It includes both provide it for free and for charge. Then why can't we charge twenty cents for a cup of water? Taiyuan Railway Bureau think providing water for charge is in accord with the thirteenth article of <Railway Law of the People's Republic of China>. They released a document says that interpretation according to the context of the railway law is not without reason. But this is contrary to the original intention of the legislators because the charge of providing boiled drinking water has been included in the ticket fee.

1.2 To explain the meaning of specific terms

There are lots of terminologies in Administrative Law. We should consider these terms' specific meaning in particular circumstances instead of explaining them according to the words' ordinary meaning. Specific terms are widely used particularly in professional rules and regulations. For these specific terms, we have to explain them. Unless we know the meaning and the scope of these terms, we can use them correctly. In the < Revenue of Fujian Province's notice on amending the original notice on the interpretation and supplementary regulations about tax on vehicles and vessels in use>, the explanation of "the taxpayer" is: the tax on vehicles and vessels in use just tax on the vehicles and vessels are used, excluding those which are out of use. Therefore, in principle, people who use vehicles and vessels are the taxpayers. According to the Interim Regulation on tax on vehicles and vessels use, "the individuals and units who have and use vehicles and vessels in People's Republic of China are the taxpayers." Usually, the owner and the user of vehicles and vessels are the same individuals or units, so the taxpayers are both the users and the owners. If there is a tenancy, the owner and the user are not the same people, they should talk over and make sure who is the taxpayer. If they didn't talk over, the user is the taxpayer.³ Local Taxation and its immediate branches, inspection bureau and branch of foreign tax in every city and county (district) of Fujian province have to follow this administrative law enforcement interpretation.

³ Revenue of Fujian Province's notice on amending the original notice on the interpretation and supplementary regulations about tax on vehicles and vessels in use, April 15th, 2002, local tax of Fujing province, The third, 2002, No.7.

The interpretation of legal concepts is to clarify the legal doubt, uniform the application of legal norms, in order to enforce the law fairly.

1.3 To resolve the disputes and unify the view

If different organs or the parties have different views on the meaning of the laws and regulations, even there are dispute, the executive authorities can make interpretations of the law. This interpretation is binding on all the parties, so the dispute can be resolved, and all sides will have a consensus on the meaning of the law (ZHANG Jia-yang and CHEN Zhi-hua, 1993).

When the executive authorities carry out <the penalty rules of the violation on the “measures for the imposition of surcharges for purchases of vehicles”>, the so-called “the vehicles and the certificate are not consensus” refers to the contents listed on the driver’s (the owner) “surcharges for purchases of vehicles payment certificate (exempt from consumption tax, exempt from Acquisition procedures) does not match the actual situation of the car. For example, the unit of the car on the certificate is Xi’an auto transport companies, however, it belongs to Xi’an Gucheng taxi company in fact; The engine number on the certificate is 00004, but the engine number of the car is 54230; Something which should be completed is uncompleted on the certificate; There is no stamp verification in management authority section of the surcharges for purchases of vehicles payment certificate. If the vehicles and the certificate are not consensus, they should be punished according to the tenth article of the “punishment Rules”.⁴

2. PROMOTE THE DEVELOPMENT OF THE LAW

Any Administrative Law has a certain degree of abstraction and ambiguity, an absolute concrete and clear administrative law norms do not exist. The meaning of the law is expressed by the text, but the text is only a tag for expression, maybe it can’t express the meaning exactly. For the obscure articles, interpretation is needed to make it clarify, so interpret the doubt of the law is the initial effect of. Then, how dose administrative law enforcement interpretation promote the development of the law? During the process of administrative law’s application, on one hand, the executive face the legal texts which are established according to the strict procedures, on the other hand, they also have to pay attention to the changeable social life. The rigid and abstract legal norms do not integrate the specific cases automatically, so they need to be explained, to form a clear answer to solve the problem. Therefore, the executive authorities make the interpretation of the law according to their own understanding of the case and the life. Because such an interpretation is only used in dealing with specific case, it did not replace the law with general applicability. For the other administrative authorities, this interpretation is just a reference but no obligation to comply with. But for the law, it is not the same. Compare with the unexplained law, this law is more or less changed, increase or decrease a number of things. At least, the unexplained law cannot be applied to this case directly, but this law can. This is the difference or a kind of progress. Despite this kind of progress almost cannot be perceived by people, it is the fact that no one can deny. When these “unperceived progress” accumulated to a certain point, causing the attention of legislators, a new law will come into being, which will make these “unperceived progress” be perceived and they will become real law. Administrative law enforcement interpretation just promote the law from immaturity to maturity, from imperfect to perfect in this way. Therefore, the administrative law enforcement interpretation is very important force to promote the development of the law, without it, the development of the law is almost impossible to move a single step.

The abstract nature of the administrative law and the specific nature of the phenomenon decide the task of administrative law enforcement interpretation should be “to make the law specific to each particular situation, which is also the mission of the application.” (Gadamer, 1999)

⁴ China, Ministry of Transport and Ministry of Finance. (July 11th, 1992). *The explanation of the vehicles and the certificate are not consensus which is the second and the tenth rules of the penalty rules of the violation on the “measures for the imposition of surcharges for purchases of vehicles”*.

Interpretation of the law is also a gradual process, with changes in social life, the meaning of legal norms should be changed too. To understand the law correctly, we must consider the purpose of the law and the social reality which is adjusted by the law. To eliminate the gap between theory and practice, administrative law enforcement interpretation must regard serve practice as a standard.

Administrative law enforcement interpretation is the bridge to connect the legislative historical background and the social reality, it changes the theory on the book into behavior in our life. During the time of social change, the new social relations emerge consistently and social life becomes very complicated, which are needed to regulate and standardize by the law. But the stability of the administrative law tends to show its negative effects, that is the law lag in social life, and even impede social change. Thus, under the situation that the statute law cannot be ahead of changes, it is essential to use the administrative law enforcement interpretation to integrate the existing administrative resources (ZHANG Jia-yang and CHEN Zhi-hua, 1993).

With the formal rule by law developed into the substantial rule by law, particular the emphasis on mobility today, laws and regulations should maintain the appropriate flexibility, so that the executive authorities can use it flexible in their application and deal with specific cases correctly. If the regulations themselves have failed to have adequate flexibility, the executive authorities can use the interpretation to give or to increase its flexibility for the executive authorities to facilitate access to enforcement. However, the interpretation of laws and regulations must be based on jurisprudence and the content must have correct and appropriate reasons. Particularly to solve the difficult problems in application, all kinds of difficult problems can be solved by interpretation, remove the obstacles to the implementation of laws and regulations so as to help improve administrative efficiency.

Law must be stable, but can not be static(Rocks Pond, 2002). Therefore, all of the legal ideas are trying to coordinate the conflicts between the stability requirements and the variability requirements. The stability of the law makes people don't have to worry about the suddenly damage and get the access to safe, the law also gain the credibility from the safe. But the objective things are constantly changed, the law must develop constantly with the change of object things, especially the changes in social relations. Thus, the contradiction between the change of objective situation and the stability of law of is emerged. Interpretation of the law is the best way to resolve this contradiction, and enhance the stability of the law.

2.1 To adjust the scope of laws and regulations application

Because lack of comprehensive consideration about the words in use when drafting regulations or legislating, so that in the implementation of the provisions, we may found the scope of the norm or meaning of the term is too widespread or too limited for the case, resulting in inconsistent with the reality. Therefore it is necessary to adjust the scope of the norm or the meaning of the term through application or interpretation, so that it can be practical and easy to implement. The Ministry of Finance and State Planning Commission jointly issued a document to ban a number of charges, including charges against railway station toilets. What is the meaning of "station toilet"? The question is, "Train Station" could have two explanations. Firstly, it refers to "within the railway station"; secondly, "within the railway station platform". Therefore, the so-called "station toilet" can be interpreted as either "the toilet within the railway station " or "the toilet within the railway station platform." Both interpretations are in line with the context, and justified. According to the literal, of course the so-called "station toilet," refers to the train station toilets. The Ministry of Railways particularly issued a document to explain this "charging station toilets "means" toilet within the platform is not for free. Later, the Ministry of Finance, State Planning Commission explained: station toilet means the scope within the station, including the toilets built on pit access, waiting room and the platform, etc..

2.2 To extend the applicable period of laws and regulations

Because of the limitation of legislative technology and objective environment, the content of the law is very hard to be perfect. In order to adapt to changes in the objective situation and the impact of policy changes, interpretation can play the adaptation and development role. It contributes to the extension of the laws and regulations applicable period.

3. MAKE UP THE BUGS OF LAW

The essence of the Administrative Law Enforcement Interpretation is the process that administration organ applies the law to specific case. One side of the process is vivid case, and the other side is the law, which is abstract and leaky. In order to resolve disputes and eliminate contradictions, what the administration organ needs to do is to combine both of them organically. While, when the law does not exist, or does not mention it exactly, that is to say when there are some bugs exist, it is rather difficult to combine the law with the fact. We can't put the single special case aside, but it's too long for us to wait the legislators amending the law. What to do? Administration organ bring forward Administrative Law Enforcement Interpretation, through which we can utilize every interpretation rules and methods to make the law item which is abstract and ambiguous a definitive and specific basis, apply the basis to the case and finally solve it. Though this process we can recognize how powerful the Administrative Law Enforcement Interpretation is. Legislation should be definitive, rigorous, comprehensive, coordinated, and cannot be ambiguous or flawed, or contradict each other. Unfortunately, it's only the desire and the goal of the legislators. As a matter of fact, nobody dare to guarantee that every law is perfect with no flaw, because the law is legislated by persons who cannot be perfect. So, how could a man with defects set down a law with no flaws? Especially in democracy society, legislation is the product of compromise of every different idea, which is called 'exchange' by Posner. Every different idea and bias exist in laws at the same time, it is rather difficult to avoid flaws and contradiction.

Since the enactment and the publication of the law, it is gradually detached from times. The law is made to meet the need of the society, but the thing is unlimited while the law is limited, so there is always something that the legislators cannot predict before. Therefore, the bugs in the law is inevitable. It is unpractical to make a law that includes all legal developments. Administrative regulations mainly depend on the interpretation of the law, providing technical and idea or policy and principles for the law's application to make up the deficiencies of the law, so that the law is full of energy and is close to the life. With the help of administrative law enforcement interpretation, not only the bugs will go away, but also the law will meet the needs of social norms (HUANG Jian-hui, 1998).

In fact, the complementarity of the bugs in law is not violated to the rule of the law. The measure of complementing bugs of legal norms not only makes the law more detailed, but also, to some extent, overcome the drawback of static nature of the law. Interpretation of administrative law enforcement as one of the ways to make up the bugs, make up the intense relations between the law and the complex and changeable society (CHEN Jin-zhao, 2003). Give an everyday example to illustrate the enforcement of bugs in law. It is said clearly at the gate of the park that no parking in the park or walk through traffic is allowed. One day, the park is on fire, fire engines came quickly; the other day, a patient in the park needs emergency care, ambulance came with a high speed. Consequently, some people questioned, ambulances and fire engines are in violation of the provisions of the park. So park official explained, prohibit parking and walking through the park is to protect the safety and maintain of the park's recreation order. The arrival of ambulances and fire engines is to ensure security and restore order, they would not jeopardize the security and order of the park, so ambulances and fire engines is not prohibited in this case.

Interpretation of the law is to make up the bugs of the law, to adapt the law to the continuous development of society and maintain the stability of the law itself. Any legislator is not a panacea, and that any law will have bugs. Legal bugs may exist in flexibility terms of the law, such as the provisions on legal principles; or may be due to "advance legislation"; of course, the negligence of legislators is also

a reason (Arthur Kaufmann, 2002). Through the administrative law enforcement interpretation, we can add the value provisions to the ambiguous laws, overcome the drawbacks of lagging, thus becoming the link to the legislative intent and administrative purposes. In this sense, the administrative law enforcement interpretation is exist as an important mechanism that balance and coordinate the legislative power and executive power (See L. Evans, J. Wright & N. Devins,1993).

"The life of law is that it's implemented." (Gunther Teubner, 2004). The function of administrative law enforcement interpretation is not only to overcome the limitations of the existing statute law and resolve the conflicts, but also during this process, it exceeds the making of the law and achieves the progressive development of the law. What's more, this progressive development also accumulated mutant development conditions. We can say, "As a wide range of Administrative Law, coupled with rich content and frequent changes, the limitation of executive statute is more prominent, the conflict of laws is more serious, so making interpretation of the law become more frequent and more pervasive; and frequent alternation means that the establishment, revision, and abolishment duration of Administrative Law is shorter than the other department laws. Therefore the effect of administrative law enforcement interpretation which connects the new law with the old one in promoting the development of administrative law is obvious (WEN Zheng-bang, 2002).

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