



The Construction of Chinese Government Accountability System on Food Safety

L'établissement de l'obligation de rendre compte sur la sécurité alimentaire par les autorités en Chine

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Abstract

Government plays an important role in food safety. In order to effectively monitor the government's liability on food safety in China, it is necessary to construct a comprehensive government accountability system, which contains the subject, object, principles and procedures of accountability.

Key words: Food safety; Government; Accountability

Résumé

Le gouvernement chinois joue un rôle hautement responsable en matière de la sécurité alimentaire. Il est nécessaire d'établir un système de redevabilité sur la sécurité alimentaire au sein du gouvernement afin que celui-ci effectue ses responsabilités de la supervision et de garantir la sécurité alimentaire. Y compris le sujet, l'objet, les principes et la procédure de l'obligation de rendre compte des autorités en matière de la sécurité alimentaire.

Mots clés: La sécurité alimentaire; Le gouvernement; La redevabilité

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Food safety is closely related to public health and safety. It also has important implications on economic development

and social stability. Therefore, government has a significant liability on food safety. And it is necessary to establish a comprehensive government accountability system in China to effectively monitor the government's liability on food safety.

1. THE SUBJECT OF THE GOVERNMENT ACCOUNTABILITY ON FOOD SAFETY

The subject of the government accountability includes the subjects of internal accountability, external accountability and social accountability. The subject of internal accountability is government accountability office. The subject of external accountability includes the legislature, the judiciary and independent accountability agencies. Social accountability refers to a broad range of actions and mechanisms that citizens, communities, independent media and civil society organizations can use to hold public officials and public servants accountable.

First, the government accountability office is the most important and conventional accountability subject in government accountability system. The Government Accountability Office for food safety can be divided into two branches that are liable for general and special accountability. According to the Food Safety Act, the General Government Accountability Office in China includes county-level and above level of local government and the agencies responsible for health administration, agriculture administration, quality control, manufacture and business administration, food and drug administration or other administration agencies involved in food safety regulation. These agencies are liable for the administrative accountability of subordinate sections and servants. In addition, the Special Government Accountability Office for food safety in China is not a general supervising agency. It is the State Food Safety Commission established in February 2010, which is the highest level of

state coordinating body on the food safety regulation. One of its important liabilities is to oversee the implementation of food safety regulation. Of course, the establishment of the State Food Safety Commission does not completely exclude other agencies' accountability on food safety. They are parallel and coexist.-

Secondly, the National People's Congress is the most important subject of external accountability. In Western countries, the Parliament has tremendous influences on government's management. The parliamentary control over government's liability is the most effective accountability. According to the regulation of the National People's Congress of China, the National People's Congress is the authority and government is the executive office of the authority. Therefore, government's actions should be under the regulation of the National People's Congress. Government accountability is basically a democratic system. In other words, any government's action should be considered as the citizens' action performed by their representatives. The basic meaning of accountability is that the representatives should take responsibilities for individuals or organizations they represent (Hughes, 2001).

Thirdly, the judiciary is also an important subject of external accountability. In China, the accountability of the judiciary is mainly implemented by using the administrative proceedings to examine whether the regulation of administrative authorities on food safety is legal or not; whether the servants in administrative authorities responsible for the food safety regulation fail to discharge their duties or have an abuse of power, a dereliction of duty, and a favoritism fraud; and whether such action is subject to a litigation. It is worth mentioning that to establishment independent accountability agencies has become a global trend in other countries to promote the government accountability. Independent accountability agencies are liable to regulate the government and subordinate sections in specific areas. The Constitution of China Article 71 indicates that when necessary, the National People's Congress and the Standing Committee of the National People's Congress can organize a commission of inquiry on specific issues to make an appropriate resolution according to the report of the commission of inquiry. All the relevant state offices, social organizations and individuals have a duty to provide necessary information to the inquiries by the commission of inquiry. Therefore, when a major food safety incident occurs, the National People's Congress and its Standing Committee have the right to set up a special commission of inquiry to investigate and account relevant authorities.

Finally, strictly speaking, social accountability can not serve as a main subject of government accountability, but the social accountability over government authorities is a developing process. The World Bank has defined social accountability as "a kind of accountability means relying on citizen's participation to strengthen the administrative accountability. It can directly or indirectly promote the

administrative accountability by ordinary people or by civil society organizations".¹ Social accountability has played an important role in the government accountability. When citizens and social organizations play increasingly important roles in the government accountability, it will lead to a more efficient accountability. Social groups are widely distributed so that they have a great potential to enhance government accountability, oversee and control a wide range of government's actions. To employ social accountability on food safety is even more essential because almost everyone in society is a food consumer. The food safety issue has become an unprecedented concern in society. In addition, the social concern of food safety is persistent because the quality of food is directly related to public health and safety.² Therefore, if we can fully guide and imply the advantage of social accountability, and institutionalize social accountability by giving appropriate authorization to citizens and social organizations to transfer its huge potential to specific accountability actions, it will benefit on the achievement of an efficient food safety regulation by government and servants.

2. THE OBJECT OF THE GOVERNMENT ACCOUNTABILITY ON FOOD SAFETY

The object of the government accountability is government itself. Government is an integration of various administrative organizations. The government's overall mandate, functions and liabilities are reflected by the mandate, functions and liabilities of various administrative organizations. The administrative offices can exercise their own administrative authorizations within the statutory terms, independently bear the legal consequences, and possess an administrative qualification. Therefore, the administrative offices become the object of government accountability. In terms of food safety regulation in China, the object of government accountability includes the county-level and above level of local government and the agencies for health administration, agriculture administration, quality control, manufacture and business administration, food and drug administration or other administration agencies involved in food safety regulation. In addition, civil servants also constitute the object of government accountability because of their own official identity. However, when civil servants perform their duties in accordance with the provisions, their administrative liabilities are generally under the government's regulation.

¹World Bank (2004). *Social Accountability: An Introduction to the Concept and Emerging Practice*. Social Development, Washington, D. C.: The World Bank, p. 76.

²During the two National Congresses in 2005, the statistics analysis indicated that the food safety issue was in the first place of concern. A total of 233 representatives submitted a motion for the establishment of Food Safety Act. In the following two congresses in 2006 and 2007, food safety issue was still one of hottest topics concerned by the majority of representatives.

But in certain circumstances, civil servants lead to accountabilities themselves. The National Compensation Act and Food Safety Act provide that civil servants can only become the object of government accountability under circumstances such as the abuse of power, dereliction of duty, favoritism and serious fraud.

3. THE PRINCIPLES OF THE GOVERNMENT ACCOUNTABILITY ON FOOD SAFETY

3.1 The Principle of Right Liability

It means the right and the liability are equal and positively correlated. The greater right is; the more liability is. There are two basic principles of equal right and liability. First, the liability must exist with the right. Without a liability, the right will be inevitably expanded and abused, which will lead to an actual condition that no one is liable and accountable. Wade, a British jurist, described this principle as the equal application of the law. He believes that the law must treat administrative subjects and objects equally. The administrative subject should not be given unnecessary privileges and exemptions above the law(Wade, Xu, et al, 1997). Secondly, the principle of equal right and liability. It requires the main subjects to be liable for their actions and the liability is proportional to the right. The equal extent of the relationship between the liability and the right is an important principle for developing and implementing an administrative liability system. It is also an important criterion to evaluate the justice of liability.

3.2 The Principle of Fault Liability

According to Food Safety Act, the accountability on food safety in China follows the principle of fault liability. The administrative organization or civil servants only become liable for their intent or subjective faults. It should be noticed that the principle of fault liability is different from the principle of executive compensation for violations. According to the principle of executive compensation for violations, once the actions of administrative authorities and civil servants are violative of the principles of liberty, they are subject to the compensation for resultant damages no matter the fault is subjective or not. The principle of executive compensation for violations avoids the difficulties of subjective identification by the principle of fault liability so that the victims can easily access to state compensation. However, the government accountability is different from the executive compensation. As an accountability system, it must assure the legitimate rights and interests of accountability objects and avoid any arbitrary accountability that may lay unnecessary liability on the object. Therefore, a more stringent principle of attribution should be adopted. In the meantime, this principle should also require a compatibility between the

liability and the subjective fault, thus achieving equal fault liability, a liability for a fault, objectiveness and justice, and realismness.

3.3 The Principle of Patency and Justice

Government accountability should be performed with a patency and a transparency. The subjects, process and results of accountability should be accessible for the public in order to protect their rights to information, participation and supervision. Meanwhile, the administrative accountability must be fair without bias to assure the legitimate rights and interests of the accountability objects. An objective and justified liability should be determined on the basis of facts and should be compatible to the fact, nature, circumstances and the degree of social scathe of the violation. The severity of subjective fault should be considered as well.

4. THE PROCEDURES OF GOVERNMENT ACCOUNTABILITY

It is generally believed that Jeremy Bentham, an English utilitarian jurist in the 18th-century, first introduced the procedure, which is correspondent to the entity, in the concept of philosophy into the legislation. In his book "The Overview of Morals and Legislation Principles", the legislation regarding of the rights and obligations of legal entities was defined as the substantive law and the legislation regarding of the means to achieve these rights and obligations and the availability of compensation for the violation was defined as the procedural law. Therefore, the procedure was closely associated with legislations. This concept almost leads to a revolution in legislation(Yang, Huang, 1999). Because the administrative accountability usually involves the distribution of the rights belonging to individual executive and civil servants, it should be performed in a very strict procedure to achieve a substantive justice on the basis of procedural fairness. In general, the administrative accountability should be subject to the following process: first, investigation and evidence collection. If a violation is disclosed, the first step is to investigate and collect evidences. This is the premise of administrative accountability to assure that the liability is determined on fully identified facts. Secondly, to organize relevant authorities to audit and enquire the parties. The relevant authorities should analyze the evidence collected, conduct reports, arrange the audition, and hear the statement of both parties. Thirdly, to ensure the parties' rights to information. Accountable authorities shall ensure the parties the rights to information about the cases, including the evidences obtained by the authorities. The parties should be informed promptly about their rights to information and the scope of the rights. And the penalty on the parties should not be announced to the public before it is determined officially. Fourthly, the cause

should be explained and announced. Once the penalty is decided, the parties should be notified in writing about the liabilities and the causes. Finally, the right to appeal. If civil servants are not satisfied with the penalty, they can seek a relief through the appeals.

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