

On the Justiciability of Road Traffic Accident Identification in China

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Abstract

In China, the identification of road traffic accident has a significant effect on the administrative responsibility, criminal responsibility and civil responsibility incurred by a traffic accident. However, the legal nature of traffic accident identification has long been a controversial issue causing endless debate in judicial practice. Inspired by two judicial cases, the author clearly sets forth the concepts of traffic accident and traffic accident identification in China in the first place and then analyzes the nature of traffic accident identification, thus coming to the conclusion that traffic accident identification should be considered as a concrete administrative act with justiciability.

Key words: Traffic accident; Traffic accident identification; Concrete administrative act; Justiciability

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INTRODUCTION

The *Law of Road Traffic Safeguard* was formulated and promulgated in 2003. Article 73 of the Law thus prescribes:

Based on inspecting, examining and investigating conducted on the sites of traffic accidents as well as relevant conclusions of checking and appraising, the traffic control division of public security authorities confirm the traffic accident in written immediately as a testimony for the disposal of the traffic accident. The basic states and causes of the accident and the

liability of the parties shall clearly be stated in written to confirm the traffic accident.

On December 1, 1992, the Supreme Court and the Ministry of Public Security jointly issued the *Notice on Handling Issues Related to Road Traffic Accident Cases (Abolished)*. Article 4 of the Notice prescribes:

If the parties refuse to accept the ascertainment of liabilities and disability evaluation for the road accident issued by the public security authorities and then initiate an administrative action or civil action to the court, the court shall not accept the case.

According to the current legislation of China, it seems that the identification of traffic accident is beyond scope of accepting cases of administrative litigation, but different approaches appear in judicial practice. Then what on earth is the nature of a road traffic accident? Can parties institute an administrative lawsuit with respect to the identification of a road traffic accident? These two questions have been long debated in China. It is an inevitable trend to integrate the identification of traffic accident into the accepting scope of cases of administrative litigation in China, which can not only supervise the traffic control division of the public security authorities, but also safeguard the legitimate rights and interests of parties.

1. REFLECTIONS ON TWO CASES

Case 1: On September 26, 2000, a driver in Shenzhen drove away in his truck after killing a four-year-old girl. After the ascertainment of liabilities is carried out at the site of the traffic accident, the Traffic Management Bureau of Shenzhen Public Security Authorities considered that the driver Zheng Xiangping should be responsible for the accident. The main evidence for the Traffic Management Bureau to make this decision was a small piece of meat hanging above the taillight of Zheng's truck. Zheng Xiangping refused to accept it on the ground that the DNA comparison testing results obtained by two

inspection agencies in Shenzhen and Guangzhou were different, which could not prove the point. On January 18, 2001, the truck driver Zheng Xiangping took the Traffic Management Bureau of Shenzhen Municipal Public Security Bureau to court as he was dissatisfied with the ascertainment of liabilities of the traffic accident and required the court to bring in the verdict that the Traffic Management Bureau of Shenzhen Municipal Public Security Bureau should revoke the original written confirmation of the traffic accident. During court hearing, the presiding judge considered that the reidentification of the road accident did not belong to the accepting scope of cases of administrative litigation and the court is not entitled to accept the case. The court therefore dismissed the plaintiff's petition.

Case 2: On September 5, 2000, the farm vehicle driven by Kang Zhonghua, son of the plaintiff Luo Lunfu, turned over at the 41km construction section of Lulong Road in order to avoid road debris, resulting in the death of two passengers. After conducting inspecting and examining at the site of the traffic accident, Division No. 3, Traffic Police Sub-branch, Public Security Bureau, Luzhou, Sichuan (hereinafter referred to as the Traffic Police Division) issued the written confirmation of the traffic accident, considering that Kang Zhonghua should take full responsibilities of the accident. On the ground of unclear facts and insufficient evidence in the confirmation of the accident, the plaintiff brought an administrative lawsuit to local court requesting the defendant, the Traffic Police Division to revoke the written confirmation of the traffic accident and reissue another one. After accepting the case, the court of first instance considered that the plaintiff's claim had no legal basis. Therefore, such defense should not be supported by the court. The plaintiff refused to accept and appealed to Luzhou Municipal Intermediate Court. The second instance made a decision on April 24, 2001 to revoke the written confirmation of the traffic accident issued by the Traffic Police Division and required the Traffic Police Division to reissue.

The above two cases both deal with the identification of a traffic accident and both parties thereof brought lawsuits to the court to seek judicial relief as they refused to accept the written confirmation of the traffic accident. However, the same appeal obtained different results. What on earth is the nature of traffic accident identification? Should the court accept the case if parties file a lawsuit when dissatisfied with the ascertainment of liabilities of a traffic accident? A series of such questions have long been debated in the jurisprudential circle of China, which also lead to different approaches taken in judicial practice. In what follows, the author will firstly set forth the concepts of traffic accident and traffic accident identification in China. Through studying the nature of traffic accident identification, the viewpoint that traffic accident identification should be considered as a concrete administrative act with justiciability is obtained.

In addition, the author's own opinions on the realization approach of justiciability of traffic accident identification are put forward.

2. CONCEPTS RELATED TO TRAFFIC ACCIDENT IDENTIFICATION IN CHINA

2.1 Concept and Composition Elements of Traffic Accident

With respect to the concept of traffic accident, there is no unified definition among various countries. The definition of traffic accident in the United States is: A road traffic accident refers to an unexpected incident or dangerous event happening to vehicles or other means of transport on the road. The definition of traffic accident in Japan is: Personal death or object damage caused when driving vehicles. The definition of traffic accident in China is: A road traffic accident refers to the incident of personal casualty or property loss caused by fault or unexpected situations happening to vehicles on the road. Judging from the definition of a traffic accident in China, a traffic accident must contain four elements, i.e. "road", "vehicle", "fault or unexpected situations" and "casualty or loss".

2.2 The Concept and Features of Traffic Accident Identification

In China, some scholars believe that traffic accident identification refers to the behavior of determining traffic accident liabilities of parties after the traffic control division of the public security authorities having conducted inspection and examination on the scene of the traffic accident, on the basis of identifying the cause of the traffic accident and taking into account the causal relationship between the traffic offence of parties and the traffic accident as well as the role of traffic offence in the traffic accident (Li, Shao, & Cui, 2003). Traffic accident identification has three distinct features: (a) the identification subject of accident can only be the traffic control division of the public security authorities in China. The traffic control division of the public security authorities is the only institution that can conduct identification of traffic accident liabilities with legal authorization. No other administrative body is entitled to do so; (b) the traffic accident identification is an action taken by the traffic control division of the public security authorities to fulfill its national public power. When parties call the police after a traffic accident occurs, the traffic control division of the public security authorities must actively get involved into the accident case and ascertain liabilities of both parties of the accident. This is an active action taken to fulfill its public power, rather than a passive action responding to application; (c) the identification of traffic accident requires the traffic control division of the public security authorities to apply professional technical knowledge, so as to accurately

ascertain liabilities of parties for the accident. At the scene of the accident, professional accident identification conducted by the traffic control division shall include road condition, vehicle condition, trace appraisal, judicial authentication and other specialized knowledge on dynamics, engineering science, etc..

3. NATURE OF DETERMINATION OF TRAFFIC ACCIDENTS LIABILITIES IN CHINA

Article 73 in the *Law of Road Traffic Safeguard* prescribes:

Based on the inspecting, examining and investigating carried out at the site of the traffic accident as well as the relevant conclusions of checking and appraising, the traffic control division of the public security authorities shall produce in written a confirmation of the traffic accident immediately, which shall act as a testimony for the disposal of the traffic accident.

Whether the traffic accident is justiciable or not depends on the nature of the accident. There is much disagreement between the practice circle and theory circle in China. Currently, there are mainly three theories: i.e. technical appraisal theory, administrative investigation theory and concrete administrative act theory.

The technical appraisal theory believes that

Compared with other types of evidence, the appraisal conclusion has a unique feature, to wit the unity of subjectivity and objectivity. The same applies to the written confirmation of the traffic accident. The confirmation is a legal document issued by the traffic control division of the public security authorities after analyzing and ascertaining basic facts, the cause and responsibilities of concerned parties of the traffic accident on the basis of examination carried out at the site of the traffic accident, technical analysis, relevant inspection and appraisal conclusion. It is a conclusive written opinion issued after the identification, analysis and judgment of all the evidence of the traffic accident. (Wei, 2004, November)

The author does not agree with this theory. Firstly, the subjects for the above two actions are different: The written confirmation of the traffic accident is produced by the traffic control division of the public security authorities based on authority; however, the action of technical appraisal is conducted by a specialized technical appraisal institution entrusted by parties to solve professional issues; secondly, traffic accident identification is unilateral. When handling the traffic accident, the traffic control division of the public security authorities needs to conduct examination, inspection and investigation on the scene of the traffic accident in accordance with law and then produces in written a confirmation of the accident, which will not be concluded even if parties of the traffic accident refuse to do so; however, the technical appraisal is bilateral, i.e. parties can entrust an appraisal institution to deal with a certain professional issue or terminate the appraisal action following their own intentions; thirdly,

there is a difference in geographical restriction: traffic accident identification bears strict regionalism. The traffic control division of the public security authorities can only conduct identification on traffic accidents within its own administrative region, but the same does not apply to technical appraisal; lastly, the written confirmation of the traffic accident is issued by staff of the traffic control division of the public security authorities in the name of the unit, while the action of technical appraisal must be signed for confirmation by parties of the accident in person.

Scholars who hold the view of concrete administrative act mainly demonstrated from the concept thereof. A concrete administrative act must meet the following requirements: (a) Subject: the performer of a concrete administrative act must be an administrative body with administrative power, e.g. an organization or individual authorized by laws, regulations and rules; (b) Authority: a concrete administrative act must be a behavior exercising administrative power, i.e. a behavior conducted using administrative power; (c) Content: a concrete administrative act is a behavior with legal effect; and (d) Form: the administrative subject needs to express its ideas in the form of language, words, symbols or other behaviors (Jiang, 2011). The author agrees with the statement that the ascertainment of traffic liabilities belongs to a concrete administrative act based on the comparison made between the concept of concrete administrative act with the characteristics of the ascertainment of traffic liabilities. The reasons are as follows: (a) Article 5 of the *Law of Road Traffic Safeguard* prescribes:

The department of public security under the State Council shall take charge of the administrative work for road traffic safeguards nationwide. The traffic control division of the public security authorities under the local governments at the county level or above shall take charge of the administrative work for road traffic safeguard within their respective administrative areas.

Article 4 of China's *Road Traffic Accident Handling Procedures* clearly stipulates:

Road traffic accidents shall be governed by the local traffic control division of the public security authorities at the county level. For those places without establishing the local traffic control division of the public security authorities at the county level, the accidents shall be governed by the local traffic control division of the public security authorities at the district or municipal level.

Thus it can be seen that the traffic control division of the public security authorities is the statutory administrative subject handling road traffic accidents. Other administrative bodys have no right to carry out the traffic accident identification. (b) Article 46 of *Road Traffic Accident Handling Procedures* prescribes: "The traffic control division of the public security authorities shall determine liabilities of parties based on the effect of their behaviors on the road traffic accident and the severity of the fault." Thus it can be seen that

the authority of the traffic control division of the public security authorities to conduct traffic accident identification is authorized by regulations of the State Council; (c) Traffic accident identification is a comprehensive analysis made by the traffic control division of the public security authorities after carrying out an investigation on the scene of the traffic accident and also drawing a conclusion on accident liabilities undertaken by parties. Therefore, the ascertainment of liabilities of a traffic accident has a critical impact on the administrative responsibility, criminal responsibility and civil responsibility undertaken by parties of the accident, which is a behavior with legal effect; (d) Article 73 of the *Law of Road Traffic Safeguard* prescribes:

Based on the inspecting, examining and investigating carried out at the site of the traffic accident as well as the relevant conclusions of checking and appraising, the traffic control division of the public security authorities shall produce in written a confirmation of the accident immediately as a testimony for the disposal of the accident.

This is also in line with the necessary requirements of a concrete administrative act, i.e. the written confirmation of the traffic accident produced by the traffic control division of the public security authorities.

4. ANALYSIS ON THE JUSTICIABILITY OF ROAD TRAFFIC ACCIDENT IDENTIFICATION IN CHINA

4.1 Seeing the Justiciability of Road Traffic Accident Identification From the Accepting Scope of Cases of Administrative Litigation

China's *Administrative Procedure Law* makes provisions on the accepting scope of cases of administrative litigation of court in a general type and samples mode. Article 2 of the *Administrative Procedure Law* makes provisions in a general type of the accepting scope of cases of administrative litigation:

If a legal person, a citizen or any other organization believes that his or its lawful rights and interests are infringed upon by a concrete administrative act of an administrative body or its personnel, he or it shall be entitled to bring a suit before a court in line with this Law.

Article 13 of the *Administrative Procedure Law* makes provisions by samples mode to exclude cases not accepted by the court, among which Article 13(4) prescribes that the court will not accept administrative acts that shall, as specified by law, be finally decided by an administrative body. So does road traffic accident identification belong to an administrative act to be finally decided by an administrative body? The answer herein is "No". So far, there is no single law in China prescribing that road traffic accident identification belongs to a final decision behavior; Article 51 of China's *Road Traffic Accident Handling Procedures* prescribes:

The parties who have any objection to the road traffic accident identification can submit a written application for review of the traffic accident to the traffic control division of the public security authorities at the next higher level within three days since the date when the written confirmation of the traffic accident is delivered.

The Procedures do not mention that the application for review belongs to a final decision behavior. From this point of view, the accepting scope of cases of administrative litigation in China does not preclude road traffic accident identification outside the accepting scope of cases.

There are two criteria for China's *Administrative Procedure Law* to define the scope of administrative litigation: the standard of concrete administrative act and the standard of personal and property rights (Ma, 2008). With respect to the viewpoint that road traffic accident identification belongs to a concrete administrative act, no repetition is needed here as the author has discussed it above. Traffic accident identification is a comprehensive analysis made by the traffic control division of the public security authorities after carrying out an investigation on the scene of the traffic accident and also drawing a conclusion on accident liabilities undertaken by the parties. Therefore, the ascertainment of liabilities of a traffic accident has a critical impact on the administrative responsibility, criminal responsibility and civil responsibility undertaken by the parties of an accident, which will affect the personal and property rights of parties. For example, Article 88 of *Law of Road Traffic Safeguard* prescribes: "Punishments for violations of the Law of Road Traffic Safeguard include: (a) disciplinary warning; (b) fine; (c) temporary suspension or revocation of driver's license; and (d) detention." Article 133 of *Criminal Law* prescribes: "Anyone who violates regulations which govern traffic and transportation and therefore results in a serious accident, causing serious injury or death or heavy losses of public or private property, shall be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention. Those who run away from the scene after causing a traffic accident or involved in other especially flagrant circumstances shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 7 years; if the escape causes death of any other person, a fixed-term imprisonment of not less than 7 years shall be sentenced"

4.2 Seeing the Justiciability of Road Traffic Accident Identification From the Perspective of Lack of Right Remedy

Where there is a right, there is a remedy. Article 73 of the *Law of Road Traffic Safeguard* prescribes:

Based on the inspecting, examining and investigating carried out at the site of the traffic accident as well as the relevant conclusions of checking and appraising, the traffic control

division of the public security authorities shall produce in written a confirmation of the traffic accident immediately as a testimony for the disposal of the traffic accident.

Traffic accident identification plays a crucial role in determining the civil and criminal responsibilities of the parties to a traffic accident. In reality, when parties have any objection to the written confirmation of the traffic accident produced by the traffic control division of the public security authorities, they can only submit an application for review to the higher administrative authority. There is no other remedy approach. Firstly, as the scene of the accident can not be retained, the higher administrative authority often judges whether the application for review is reasonable depending on the written materials of the appraisal on the scene of the accident conducted by the traffic management department. In most cases, the conclusion of upholding the original decision is made, in which the presence of “bureaucrats shielding one another” is suspected and illegal administration is winked at; secondly, as there are limited remedy approaches for the ascertainment of liabilities of a traffic accident, and means of supervision are insufficient on the administrative act of accident identification conducted by the traffic control division of the public security authorities, in the process of ascertainment of liabilities of a traffic accident, staffs tend to make judgment based on leadership views or previous work experience. As a result, there is arbitrariness in traffic accident identification, which reduces the authoritativeness of traffic management conducted by the public security organ to some extent and also fails to protect the legitimate rights and interests of the parties; thirdly, the *Law of Road Traffic Safeguard* stipulates that the confirmation of the accident shall act as a testimony for the disposal of the accident. When the court hears such cases, the written confirmation of the traffic accident can be given no reference to, indicating that the written confirmation of the traffic accident produced by the traffic control division has flaws. This raises two questions: on the one hand, the court has no legal basis when requiring the traffic control division of the public security authorities to reproduce a written confirmation of the traffic accident; on the other hand, the court has no professional technical knowledge and appraisal means related to the fact in the written confirmation of the traffic accident, thus failing to safeguard the legitimate interests of parties.

From what has been mentioned above, it can be seen that traffic accident liability needs to clarify its justiciability in legislation, which can not only help supervise the administrative acts of the traffic control division of the public security authorities, but also allow the parties of the accident to safeguard their own legitimate rights and interests through legal means.

5. REALIZATION APPROACHES FOR THE JUSTICIABILITY OF ROAD TRAFFIC ACCIDENT IDENTIFICATION

5.1 Constructing Judicial Remedy Procedures for Refusal to Accept the Ascertainment of Liabilities of a Traffic Accident

As an important link and procedure in the process of handling traffic accidents, traffic accident identification plays a crucial role in determining the administrative responsibility, criminal responsibility and civil responsibility undertaken by the parties. Through the above analysis on the nature of traffic accident identification, it can be known that traffic accident identification is a concrete administrative act with justiciability. In addition, the accepting scope of cases of administrative litigation in China's *Administrative Procedure Law* does not rule traffic accident identification out. Therefore, the author suggests that it is necessary to legislatively stipulate that, when the parties of the accident refuse to accept the accident identification conducted by the traffic control division of the public security authorities, they can bring a lawsuit to the court. There are two reasons for this: firstly, it can prevent staffs of the traffic control division of the public security authorities from abusing their powers and neglecting their duties so as to damage the legitimate rights and interests of the parties, and also help supervise the staffs; secondly, it can increase the remedy approaches for the parties of the accident, so that they can safeguard their own interests through legal means.

5.2 Establishing Administrative Tribunals With Neutrality and Independence

The administrative tribunal is a judicial organ with strong independence established by countries in addition to the court. It has both legal and industrial professional knowledge, which is favorable to the efficient supervision over the exercise of administrative power and the right remedy with simple and powerful procedures. As an emerging and growing mechanism worldwide, it has received extensive attention from and been actively explored by various countries. Especially in Germany, the administrative adjudication system is given special attention. The problem of insufficient specialization division still exists in administrative right remedy acts in China. Currently, professional committees of administrative review are only set up in some areas. But their lack of independence as well as the less rigorous and perfect review procedures cannot ensure the impartiality of review decisions. All these factors restrict citizen's right of administrative supervision and administrative remedy.

Among enormous traffic accidents at present, there are inevitably a large number of cases in which

the administrative body infringes upon the interest of related parties. Thus, it is extremely necessary to set up administrative tribunals for traffic accidents in order to safeguard rights of the related parties. Article 53 of the original *Road Traffic Accident Handling Procedures* (Abolished) prescribes:

If the parties of a road traffic accident have any objection to the ascertainment of liabilities, they can submit an application for reidentification to the higher public security authority within 15 days after receiving the written confirmation of the traffic accident. The reidentification of the higher public security authority shall be a final decision.

Section 2 of Chapter 6 of the *Road Traffic Accident Handling Procedures* prescribes new review procedures for traffic accident identification. Although it seems to have replaced the reidentification literally, it is still a law enforcement supervision activity within the administrative body in essence.

At present, China's administrative law enforcement supervision departments are internal organizations affiliated with governments or administrative bodies at various levels. Staffs have no ability to independently exercise authority. The reason is that law enforcement supervision agencies have complicated relations with administrative law enforcement organs and they need to take care of the interests of relevant authorities. The law enforcement supervision agencies are responsible for their administrative leadership. They have no independent decision-making power but to listen to leadership views. As a result, the law enforcement supervision agencies can not make true verdicts and then the general public questions their decisions, which adversely affect the

authoritativeness of administration. It is therefore obvious that by reference to the administrative adjudication system, it is extremely necessary to set up administrative tribunals with neutrality and independence in addition to the court.

CONCLUSION

In China, the dispute over the justiciability of traffic accident identification exists in both practice circle and theory circle, resulting in much disagreement about whether traffic accident identification belongs to the accepting scope of cases of administrative litigation in judicial practice. It is necessary for China to perfect relevant legislations as soon as possible in order to bring traffic accident identification into the accepting scope of cases of administrative litigation and to protect the legitimate rights and interests of concerned parties.

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