

Problems Existing in Supervision on Administrative Enforcement of Law and Countermeasures

ZHANG Lingzhu^{[a],*}

^[a]Changchun University of Science and Technology, Changchun, China.
*Corresponding author.

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Abstract

It is necessary that the administration by law requires the system of administrative legal supervision to be constantly improved. However, at present, there exists a series of disadvantages in the system of the administrative legal supervision in China, such as, irrationality of the allocation of power in its overall distribution in the system of administrative legal supervision; deficiency of independence supposed of the supervision subject; bad effect of the supervision means and supervision mode; lack of due transparency in terms of the supervision procedure. With regards to these prominent problems, we ought to set about adjusting and reforming and establishing scientific, highly effective, feasible and comprehensively coordinative administrative legal supervision system to enable the administrative legal supervision mechanism to run in a good way and to enable administration by law to get realized.

Key words: Supervision on administrative enforcement of law; Strengthen; Improve

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INTRODUCTION

The 15th National Congress of the Communist Party of China explicitly regarded the rule by law as one of the basic national strategies. The core of rule by law is the

administration of law. In the real life, 80% of laws and regulations formulated by the country are organized for implementation by administrative organ. Thus, only if the administrative organ really achieves administration by law, can the value of law and regulations really come true. As an important function and power of the administrative organ to exercise management of both national and social affairs, administrative enforcement of law has played an important role in ensuring correct implementation of laws and regulations, attacking all kinds of illegal and criminal activities and protecting the legal rights and interests of citizens, legal persons and other organizations. Nevertheless, the actual condition of administrative enforcement of law currently is far from the requirement for administration by law and rule by law in construction of socialist. Therefore, it seems especially necessary to conduct supervision on administrative enforcement of law.

1. THE CONCEPT OF SUPERVISION ON ADMINISTRATIVE ENFORCEMENT OF LAW

The so-called supervision on administrative enforcement of law is the general term that all state organs, social organizations, political parties and citizens conduct appropriate supervision and examination on whether the administrative enforcement of law behaviors of the national administrative organ and its working staff are legal and they take necessary measures if necessary. Supervision on administrative enforcement of law mainly contains the following content: supervising and examining whether administrative laws, rules and regulations are carried out and implemented in a correct way and which problems existing in the process of implementation need to be resolved in terms of legislation; supervising whether the administrative organization for law enforcement and its working staff enforce the law in strict accordance with

the statutory obligations and power; supervising whether the administrative organization for law enforcement and its working staff follow strictly the statutory procedures; supervising whether the effect of administrative enforcement of law achieves its anticipated objective. Complete supervision on administrative enforcement of law also contains whether the supervision subject is able to take necessary measures to correct any illegal or inappropriate administrative enforcement of law.

2. PROBLEMS EXISTING IN SUPERVISION ON ADMINISTRATIVE ENFORCEMENT OF LAW

Ever since the reform and opening up, especially the 15th National Congress of the Communist Party of China, with the advancement of construction of socialist legal system in China, an all-around supervision system has come into being in China that consists of the National People's Congress supervision, internal supervision of administrative organ, judicial supervision and news supervision of public opinion as well as supervision by the masses. Establishment of this sort of supervision system has played a significant role in ensuring that the administrative organ exercises its power of law enforcement in a correct way. Nonetheless, it must be admitted that, the supervision function of the above supervision subjects is far from being performed completely and some even haven't performed the function of supervision. In the real life, there still exist a lot of problems to be resolved by the above supervision subjects in the process of exercising the power of supervision. Specifically speaking, the main problems are listed as follows:

2.1 The Supervision Function of Organ of Power Is Seriously Weak

In accordance with relevant provisions of the Constitution and local Organization Law, the National People's Congress is the organ of power of the nation, administrative organ is the executive organ of the organ of power and it is led by the organ of power, responsible for the organ of power and supervised by the organ of power. The National People's Congress possesses the right of inquiring, electing, recalling and examining the government and the government has the obligation to report its work to the National's People's Congress, receive examination by the Congress and answer inquiry of the Congress. Therefore, it stands to reason that compared with other forms of supervision, supervision of the National People's Congress should be the most comprehensive and authoritative. However, in the real life, the fact is worlds apart. Actually, the National People's Congress is yet to perform its due function of supervision. Although the Constitution and law make explicit

provisions on the fundamental obligations and rights of the supervision function of the National People's Congress, they are yet to make any specific, explicit or detailed stipulation on such issues as the supervision content, procedure, channel, outcome and setting of supervision organs. This causes supervision of the National People's Congress to lack specific operating specification. What's more, the National People's Congress has neither the authority to investigate and collect evidence nor the power to directly settle a case. This does not indicate the authority that the organ of power of the nation has to look rigorously into any illegal behavior in enforcement of law. All the above has weakened seriously the supervision function of the National People's Congress.

2.2 Internal Supervision of Administrative Organ Is Ineffective

Internal supervision of administrative organ is classified into the two kinds of rank supervision and special supervision. Rank supervision refers to supervision conducted by the superior administrative organ of the inferior administrative organ based on the relationship of administrative subordination. Special supervision refers to such specialized supervision as supervision over administration, auditing supervision and other forms of supervision. Currently, both of these two kinds of supervision have problems.

2.2.1 Problems Existing in Rank Supervision

First of all, in pursuant to regulations in "Administrative Reconsideration Law", the superior administrative organ not only has the power to supervise the specific administrative behavior of the inferior administrative organ, but may also supervise the legality of normative documents formulated by the inferior administrative organ. However, this kind of supervision is often conducted through the approach of administrative reconsideration, a kind of negative post supervision. Usually, prior to the supervision, the legal rights and interests of the administrative opposite party have suffered from the infringement.

Then, it is generally the responsibility of the governmental legal bureau to implement the rank supervision within the administrative system. Yet, the problem is that a large majority of legal institutions that have been set up heretofore participate in the two tasks of discussion of legislative documents and administrative reconsideration response. There have, so far, not had any specific law, rule or regulation stipulating this important task of supervision on enforcement of the law. Usually, the government legal institutions merely have the right to investigate, but do not have the right to make direct punishment. Such situation results in empty supervision right possessed by the legal institutions and difficulty in exercising the function of supervision. Thus, it is difficult for them to objectively conduct supervision on enforcement of law.

Finally, the author believes that, under the current administrative system, it is irrational that the superior administrative organ has the right to supervise the inferior administrative organ, whereas the latter has no right to supervise the former. In effect, it is not because the administrative organ has no knowledge in the law that some illegal administrative behaviors are done. Instead, this is because they have no other choice due to pressure from the superior government. Under such circumstance, although the administrative opposite party may obtain relief by means of administrative reconsideration, the problem is that not all infringements can be resolved by means of relief. Once some illegal behaviors are done, the losses they have brought about are usually hard to retrieve.

2.2.2 Problems Existing in Special Supervision

The biggest problem existing in the special supervision is that the supervisory organ and the auditing organ attach too much to the administrative organ. In China, the administrative organ takes charge of such major powers as human resources, financial resources and material resources. Under such a system, it is almost unimaginable to require the supervisory organ and the auditing organ to conduct practical and realistic supervision on the administrative organ.

2.3 Independence of Organ of Power Is Weak and Judicial Supervision Is Too Much Disturbed by External Factors

The judicial supervision in China contains supervision of adjudication organ and supervision of procuratorial organ. The judicial organ is faced with the similar problem as the special supervision in its supervision on the administrative enforcement of law. The Administrative Procedural Law has explicitly stipulated that the people's court investigates whether a specific administrative behavior is legal and it has the right of revocation if it discovers the specific administrative behavior under litigation is illegal and orders the administrative organ to perform again the specific administrative behavior. In the meantime, the Law has stipulated that if the people's procuratorate finds a verdict or judge which has been legally effective in the people's court violates stipulations of the law or rule, it is entitled to protesting against the verdict or judge in pursuant to the trial and supervision procedure. Nevertheless, the rights of human resources, financial resources and material resources of both the court and the procuratorate are under control of the government at the same level. Thus, supervision of the judicial organ on administrative enforcement of law will necessarily be restrained by the local government. It is quite difficult to require the judicial organ independently to exercise its obligation to put right mistakes without disturbance from the administrative organ in the case of an specific administrative illegal behavior.

2.4 The Effect of News Supervision of Public Opinion Is Not Good Enough

In western countries, public opinion is referred to as the fourth power, paralleling with the power of legislation, the judicial power and the administrative power. Thus, it can be seen that, in western countries, news consensus plays quite an important role. In China, news consensus has also played a lot of roles. Quite a large number of illegal cases are, firstly, exposed by the news media before they are settled and then arouse attention of the relevant section and are resolved finally. However, the news consensus in China has not exerted its deterrent force supposed. The news medium in China is the eyes and ears of the party and the government instead of public opinions in its general sense. It is subordinate to administration of relevant ideological section of the Party and government at the same level. In addition to general criticism and suggestions, its other functions have to get approval from the competent department. As a result, news media are merely regarded as a pure popularization tool, while its function of conveying information and its role as a tool of supervision by public opinions is ignored. It is biasedly thought that critical news reports are making trouble to the government at all levels. Thus, the news media may only make some reports ex-post to avoid the important and dwell on the trivial as regards the illegal cases of the administrative organization for law enforcement which have seriously damaged the legal rights and interests of the administrative opposite party.

3. COUNTERMEASURES TO STRENGTHEN AND IMPROVE SUPERVISION ON ADMINISTRATIVE ENFORCEMENT OF LAW

3.1 The National People's Congress Need Assume the Obligation of Supervision and Really Realization Return of the Function of Supervision

The way to set up special National People's Congress Supervision Committee within the National People's Congress is to, first of all, take pilot measures to set up supervision committee in part of provincial people's congress which specially performs the function of supervision and takes the lead in coordinating supervision on enforcement of law and supervising construction of legal system within the local administrative region. In order to ensure necessary authority and strengthen leadership of the Communist Party of China, the position of this committee is supposed to be higher than other special committees of the people's congress at the same level. Its position should be half rank higher, similar to the position of the discipline inspection commission in the system of the CPC Organization. Its members are

mainly recommended by local state organ, political party organization and social organization. As a transitional mode, the regular administrative body established by the committee may cooperate with the discipline inspection commission and the supervisory organ, forming a “three-in-one” core institution to take the lead in coordinating supervision within the administrative region. From the perspective of function, the people’s congress supervision committee ought to consolidate examination and supervision on the abstract administrative behaviors, including administrative legislation. In addition to the special people’s congress supervision committee, it is also necessary to constitute the people’s congress supervision committee member. In specific operation, it is advised to take pilot measures in a large number of regions. The Standing Committee of the National People’s Congress selectively sends supervision commissioners to organs of part of administrative regions and particular regions who carry out relatively timely, direct, transcendental and authoritative special supervision constraint on the administrative power execution of corresponding regions and organs. A supervision commissioner of the people’s congress is a senior position with strong independence which is dispatched by the Standing Committee of the National People’s Congress and accepts its work instruction, and it possesses the notification rights, the rights to make suggestions and temporary disposition rights regarding investigation into a fact, personnel punishment and relief of rights and interests. Establishment of this position helps to avoid interference of local protectionism and “the wind of intercession” in supervision.

3.2 Strengthening and Improving Rank Supervision and Special Supervision Within the Administrative System

3.2.1 Strengthening and Improving Rank Supervision Within the Administrative System

First of all, it is necessary to set up the recording review system for normative documents. Any normative document that is formulated by the inferior administrative organ has to be submitted to the superior administrative organ for recording and review. If the superior administrative organ finds the normative document contradicts with the Constitution, laws and rules, it is supposed to revoke or order the inferior administrative organ to make corresponding correction. Then, it is suggested to enhance the authority and position of government legal department and increase the qualification of government legal institution. The legal institution of the government at all levels needs to be semi-lattice lower than the local government at the same level, but higher than the specific department for enforcement of law. In this way, it can really become an unconventional functional department which specializes in supervision on enforcement of

law on behalf of the government. The deputy chief of the executive who takes charge of the legal work of the government at all levels holds as a part-time job the director general of the legal bureau. The bureau should also be equipped with personnel with high level and personal quality who are specialized and familiar with law and who adapt to proceeding of the work.

3.2.2 Change the Condition of Supervisory Organ and Auditing Organ Attached to Administrative Organ and Strengthen Special Supervision Within the Administrative System

Currently, the supervisory organ and the auditing organ are subordinate to the double leadership of both the superior organ and the government at the same level. The superior organ is specially responsible for leadership and guidance in terms of business, while the government at the same level mainly takes charge of their human resources, financial resources and material resources. In this way, as a matter of fact, the supervisory organ and the auditing organ are subordinate to leadership of the government at the same level. In order to change this system, it is necessary to hand the major power of human resources, financial resources and material resources of the above two organs over to corresponding superior organs and conduct vertical leadership within the system so as to enable the two organs to unhook connections with the government at the same level.

3.3 Really Realize Judicial Independence to Strengthen Supervision of Judicial Organ on Administrative Organ

There is no way to mention justice without independence of judicature. In order for the judicial organ to thoroughly break away from disturbance of the administrative organ and independently handle a case, it has to completely cast off its dependence on the human resources, financial resources and material resources of the administrative organ and unhook connections with the administrative organ. To this end, it is suggested that the major power of human resources, financial resources and material resources owned by the judicial organ be handed over to the corresponding superior organ and vertical leadership within the system is carried out. Furthermore, it is necessary to modify “Administrative Procedural Law” currently in effect. The current Administrative Procedural Law merely brings the illegal specific behaviors that infringe the personal rights and property rights of the administrative opposite party into the scope of administrative litigation. This scope is too narrow and it is required to bring all illegal administrative specific behaviors that infringe all legal rights and interests of the administrative opposite party into the scope of the administrative litigation. In this way, can the legal rights and interests of the administration opposite party be comprehensively assured.

3.4 Accelerate to Formulate “Press Law” to Further Perform the Supervision Function of News Consensus

In order for news consensus to really perform its function of supervision, support from the Party committee and the government at all levels are indispensable. The reason why the “Focus Report” of CCTV dares to expose its reports is that it has got great support from the Party Central Committee. Thus, the party committee and the government at all levels have to vigorously support disclosure of the news media. And it is necessary to formulate “Press Law” as soon as possible to ensure personal safety of journalists and freedom of the news report, define all specific legal issues connected with news consensus and establish system of news disclosure case registration and track. The legal committee of the people’s congress strengthens connection with the news media to disclose in time and supervise settlement of the cases exposed.

With constant advancement of the strategy of rule by law and improvement of administrative enforcement

of law, the legal administrative supervision system will also move forward and be improved. We need to be established in the current national condition, absorb and refer to success and failure in the system of administrative supervision over the history, establish the legal administrative supervision system that fits in with the national condition and push forward administration in China towards democracy, rule of law, high efficiency and honesty.

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