

On the Principle of Protection of Reliance Interests in Administrative Law

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ABSTRACT

Reliance on the principle of protection of interests first appeared in Germany, the German Administrative Procedure Act of 1976 established the principle as one of the basic principles of administrative law, and since then has undergone continuous development and improvement, and the development and improvement of the principle of protection of interests of the other civil law countries has had a far-reaching impact on the development and improvement of the principle of protection of interests of reliance. China's research on the principle of protection of reliance interests started late, the implementation of the administrative licensing law in 2004, article 8 and article 69 is the first time in China to the principle of clarity, which shows that the Chinese government is committed to transforming the functions of the government, in order to effectively protect the administrative relative of the legitimate interests of the trust. The concept of building a country based on the rule of law in China has put forward higher requirements for government integrity, and the administrative organ should ensure the continuity and stability of its administrative behaviour, guarantee the legitimate expectations of citizens, and maintain the stability of social order. The government's backtracking will cause incalculable damage to the government's credibility and integrity image. The application of the principle of protection of reliance interests in China is not only a necessary element in promoting the construction of a government of integrity in China, but also an important condition for the construction of a modern state of law.

KEYWORDS

Trust Interests; Administrative Law; Protect.

1. OVERVIEW OF THE PRINCIPLE OF PROTECTION OF RELIANCE INTERESTS

1.1. The Basic Concept of the Principle of Protection of Reliance Interests

The principle of protection of reliance interests mainly refers to the administrative subject shall ensure the stability and continuity of the administrative act which has been put into effect, in order to protect the administrative relative based on the goodwill of the administrative act which has been put into effect to generate the justified and reasonable trust. The trust in the field of administrative law refers to the trust and expectation of the administrative relative to the administrative organ's administrative act. In the administrative legal relationship, on the one hand, the citizens based on the administrative organ's trust, according to the administrative organ's decision, order and policy to carry out social activities, on the other hand, the administrative organ needs to guarantee the continuity and stability of the effectiveness of the administrative act, so that the administrative act can continue to guide the citizens to engage in social activities, so as to ensure the smooth and orderly operation of the social order.

Chinese scholars have different opinions on the concept of this principle. Professor Ying Songnian defines this principle from the perspective of the administrative relative, and he points out that protection of reliance refers to the fact that the administrative relative engages in certain behaviour or makes certain arrangements based on his trust in the administrative act, and that the legitimate interests arising from such behaviour or arrangements should be protected by law. Professor Jiang Ming'an explains this principle from the perspective of the administrative subject, and believes that this principle means that the administrative organ should keep its promise, and unless the administrative relative is at fault for the making of the administrative act of granting benefits, the administrative organ shall not arbitrarily revoke the administrative act, or revoke the administrative act if the continuation of the administrative act will harm the public interests, and give the administrative relative financial compensation or indemnification. Professor Ma Huaide, on the other hand, focuses on the authority of the law and the principle of stability of the law, and points out that the principle of protection of reliance interests pays more attention to the certainty, stability, and trustworthiness of administrative activities, and that administrative decisions cannot be changed from one day to the next, so as to protect the predictable interests of the administrative counterparts when both sides of the administration carry out the administrative legal activities together. Zhou Youyong professor to the protection of the interests of the perspective of the principle of interpretation, that when the administrative relative based on the administrative act of granting the interests of trust, the administrative organ shall not arbitrarily exercise the right of administrative revocation, or else shall compensate or compensation for the administrative relative rely on the survival of the act of the legitimate rights and interests obtained.

To sum up, the concept of the principle of reliance interest can be summarised as follows: based on the stability of the law and the protection of reliance interest, when the administrative relative relies on the administrative act and generates reliance interest, the administrative organ shall not exercise administrative revocation power arbitrarily without a definite cause, or else it shall indemnify or compensate for the loss of the reliance interest of the administrative relative.

1.2. The Important Significance of the Principle of Protection of Reliance Interests

1) Regulate the administrative organ's administrative behaviour

The application of the principle of protection of reliance interests in administrative legal relations is of vital importance, on the one hand, the principle of protection of reliance interests for the administrative organs to exercise administrative power to provide constraints and guidance, strict constraints on the exercise of administrative power, for the realization of the administrative relative's reliance on the interests of the protection of the administrative organs, is conducive to winning the trust and recognition of the public to the government, and facilitates the administrative organs to carry out administrative affairs. If the public does not trust the government and does not co-operate with the government, the work of the administrative organ will not be carried out. On the other hand, when the administrative organs are subject to the principle of protection of reliance interests, they can better regulate their own law-enforcement behaviours and gain understanding and support, which can promote the administrative organs to better serve the people, reach out to the masses, and effectively consider the interests of the masses, so as to further promote the improvement of administrative efficiency.

The most basic and important requirement for the construction of the rule of law government is administration in accordance with the law. Administrative organs should uphold the principle of administration according to law and strictly regulate the exercise of administrative power. The phenomenon of administrative organs going back on their words, making frequent changes in their orders and erratic policies will not only lead to the loss of trust in the government by the administrative relative and damage the credibility and integrity image of the government, but also is not conducive to the long-term stability of the country and the construction of the government of the rule of law.

The principle of protection of reliance interests is the public based on the recognition of the national law and government, trust should come into being a principle, the establishment of the original intention and purpose is to regulate, constraints on the administrative organs of law enforcement behaviour to protect the realization of the interests of reliance. If losses are caused to the trust interests of the administrative relative, compensation or indemnification should also be given, thereby increasing the cost of administrative authorities' breach of trust, and strictly implementing a mechanism of accountability, so as to make the administrative authorities responsible for their irregular law-enforcement activities.

2) Protecting the administrative relative's reliance interests

The principle of protection of reliance interests through the administrative revocation and repeal of the act of constraints and regulations so as to protect the administrative relative's reliance interests, the principle of reliance interests is the protection of the legitimate rights and interests of citizens. The administrative relative trusts the law and government of the country, so that he can arrange his own life and dispose of his own rights reasonably based on the trust of the administrative act that has taken effect. Without the guidance and regulation of the trust interest protection system, it is easy to lead to government abuse and corruption, and damage the legitimate rights and interests of citizens. The accumulation of time will make the citizens more and more distrustful of the government, which is not conducive to the transformation of the government, and is even more detrimental to the construction of a harmonious society. The establishment of the principle of protection of trust interests is crucial. The government needs to get the principle of protection of trust interests in the work of the norms and guidance, so as to harvest the understanding and trust of the citizens, the citizens of the administrative organs of the trust can also be more to promote the administrative organs for the people to do good work, do practical things, and carry out the good style of serving the people. The principle of trust and interest protection requires that the administrative organs do not casually change the provisions and procedures, do not change the results without authorisation, the occurrence of special circumstances to carry out timely remedies, as far as possible to protect the interests of the citizens.

3) To maintain the stability of social order

The rule of law society anything must be carried out on the legal track. In recent years, a large part of the administrative dispute cases have revealed the administrative organs of the evils of changeable, erratic policy. People in social life should comply with the norms, guidelines is the social order, social order is stable, people can reasonably arrange their own behaviour, dispose of their rights, and then can promote the harmonious development of society. The stability of the legal system is the harmonious and orderly social order requirements, the principle of protection of reliance interests is through the constraints of administrative organs to comply with the law to maintain the stability of the social order. Requirement of administrative organs to make administrative acts should ensure the continuity and stability of the effectiveness of the administrative act, only then the administrative relative can be guided by the administrative act as a reasonable arrangement of social activities, so as to form a predictable and stable social order. Even if the administrative act has violated the law, as long as the administrative relative is in good faith, in order to maintain the social order of the order and the stability of the law, can not be arbitrarily exercise the right of administrative revocation. If for the protection of public interests and have to change the original administrative act, also should be for the loss of trust interests to give property compensation or compensation, reduce because of the change of administrative act to the original social order of the unstable factors. The principle of protection of reliance interests on the one hand, by guaranteeing the stability and predictability of administrative acts, to protect the realization of the administrative relative's reliance interests, on the other hand, to provide remedies for the loss of reliance interests to reduce the changes in administrative acts on the social order caused by the impact of the principle of the maintenance of a stable social order, so as to reflect the principle of the importance of the value and significance of the social order.

4) Shaping the image of government integrity

Integrity is not only a personal code of conduct, but also a country a government to do the norms and guidelines, is the external image of the country and the government. The principle of good faith is the government in the management of social and public affairs should abide by the basic norms, administrative organs in the exercise of administrative powers and responsibilities in the process, should strictly regulate its law enforcement behaviour, on the one hand, publish information comprehensive, accurate and true, on the other hand, shall not be arbitrarily altered or withdrawn has been made the effective administrative action. The principle of protection of trust interests requires the government to keep its promises, prohibits the phenomenon of changing its orders, and protects the trust and expectation of administrative relative to the administrative act.

Establishing an image of integrity is crucial for the government to carry out its work. For citizens, their trust in the government is a willingness and readiness to turn to the government for help, to let the government handle their own private interests with confidence, to generate trust in the government, and to promote the stable development of the relationship between the two. Only if the government is honest will they take the initiative to seek help from the government, organise their lives and dispose of their rights in accordance with the government's rules and regulations, and the government will be able to give further play to its function of public administration. If citizens do not trust the government, they will be even less likely to listen to its arrangements, and society will then be in a state of disorder. For the government, integrity is not only an image, but also a prerequisite for the government to exercise public power, only the citizens trust the government, the government can carry out administrative activities smoothly, integrity is crucial to government administration. Administrative organs should implement the principle of protection of trust interests, wholeheartedly serve the people, consciously regulate administrative behaviour, to protect the trust interests of administrative relative. Only the integrity of the government can gain the trust of the citizens, the government can better manage the public affairs of the society, and truly serve the people. The rule of law government is the integrity of the government is also the people's recognition and satisfaction of the government. In the process of promoting the construction of the rule of law country, it is necessary to pay great attention to the construction of government integrity.

To sum up, the significance of the application of the principle of protection of reliance interests is not only reflected in the establishment of effective constraints on administrative organs, increasing the cost of administrative organs' breach of trust, strictly implementing the mechanism of accountability, urging them to standardise their law enforcement activities, regulating the power of administrative organs, and guaranteeing the realisation of the legitimate reliance interests of the administrative counterparts, but also in the long run, more conducive to the maintenance of the government's public credibility, the defence of legal authority, and the maintenance of the The stability of the social order and the integrity of the government's image, and further promote the integrity of the government and the rule of law in China.

2. PROBLEMS IN THE APPLICATION OF THE PRINCIPLE OF PROTECTION OF RELIANCE INTERESTS

Reliance on the principle of protection of interests in China's legislation mainly in the administrative licensing law of the People's Republic of China, article 8 and article 69, but not as a basic principle of administrative law written into the constitution. With the variety and complexity of administrative affairs, the existing legal provisions can no longer cover all administrative legal relations, and the judicial dilemmas and law enforcement problems of this principle in China have gradually emerged, such as unclear scope of public interest, unclear matters of administrative compensation or indemnification, etc., which limit the development and application of this principle.

2.1. The Scope of Public Interest is Unclear

The application of the principle of protection of reliance interests, will involve the administrative organs of the revocation or change of the administrative act has come into effect and can protect the public interest of society and the revocation or change of the act will damage the administrative relative's reliance on the interests of the interests of the weighing of interests. Generally speaking, when the public interest is greater than the administrative relative's trust, the administrative organ shall revoke the administrative act which has been put into effect for the purpose of safeguarding the public interest, and compensate or indemnify the administrative relative for the damage to his or her justified trust; when the public interest is smaller than the administrative relative's trust, the administrative organ cannot revoke the administrative act which has been put into effect. China's administrative law only mentions the administrative organ in the consideration of public interest can change or revoke the administrative act which has taken effect according to law. But for what is the public interest and the extension of the public interest is not specified, only in the administrative licensing law, article 8 mentioned the public interest. China's 'public interest' is applied to a wide range of areas, but there is no uniform statement on the concept of public interest. This leads to the fact that in the relationship between the government and its administrative counterparts, the government has an absolute advantage and has discretionary power over the public interest, which can lead to situations in which the administrative organs use their advantageous position to harm the legitimate rights and interests of their administrative counterparts. Public interest is composed of two abstract concepts, namely, 'public' and 'interest', which leads to the generality and uncertainty of the concept of public interest. As the ruler of the state, for the benefit of the vast majority of the people in society, the ruling class needs to formulate a certain system to effectively balance the interests of the vast majority of the people and the interests of individuals, so as to strengthen the rule of the state, and this system is the public interest. If the law fails to define the public interest clearly, it will make the administrative organs have too much discretionary power, leading to the squandering and abuse of power. This will not only harm the legitimate rights and interests of the relative, but also is not conducive to the construction of a government based on the rule of law. To sum up, it is very important to clearly define the scope of public interest.

2.2. Unclear Standards for Administrative Compensation and Indemnity

'There is trust, there is damage, there must be compensation or indemnity, this is the commitment of the rule of law state to the members of society.' The implementation of the protection of the reliance interests of the relative cannot be separated from a sound compensation and indemnity system. At present, China's law for compensation, compensation for the specific content does not carry out detailed provisions. First of all for the compensation procedure how to start is not yet clear; Secondly, if it is to which department to apply, the application period, the administrative relative need to provide what materials, compensation or compensation of the specific matters, the amount of national law also does not provide. The administrative compensation standard is the basis on which the subject of the compensation obligation determines the amount and range of compensation. The matters and amounts of compensation and indemnification directly determine whether or not reliance interests can be adequately protected, and involve the personal interests of the administrative relative. If the compensation, compensation standard is not clearly stipulated, the reality of fuzzy, abstract compensation standard is very easy to leave the compensation obligation subject to the abuse of discretionary space, the use of lower compensation standard, is not conducive to the realization of the administrative relative interests of reliance; On the other hand, the administrative compensation and compensation of the specific matters of the unclear will lead to the judicial practice is not a unified guiding ideology, resulting in the same case of the case of a different judgement situation.

2.3. Serious Phenomenon of Frequent Changes by Administrative Organs

The principle of protection of reliance interests requires that the administrative organ can not arbitrarily revoke or change the administrative act that has come into effect, the most basic requirement put forward by the administrative organ is that the administrative organ should strictly limit the exercise of its right of revocation. Even if an administrative act that has entered into force is revoked in compliance with the regulations, the reasons for the revocation of the effective act should be explained to the administrative relative, and a certain amount of acceptance and adaptation should be reserved for the relative. Due to the administrative organ staff for the laws and regulations of the wrong understanding or work did not fulfil the duty of prudent review, resulting in the administrative organ to make the administrative act is not lawful, the administrative organ to correct their own mistakes will usually revoke the administrative act, but the exercise of the right to revoke will cause the administrative relative's expectation of the benefit is not realised, if the administrative relative on the basis of the trust of the original administrative act has already paid some After the cost, the administrative relative will produce corresponding economic loss. The administrative organ changeable is nowadays lead to the administrative organ and the administrative relative to produce the most direct cause of dispute, is not conducive to the protection of the administrative relative to the trust benefit, is not conducive to set up the good image of the good faith of the government.

3. IMPROVE THE PRINCIPLE OF PROTECTION OF RELIANCE ON THE RECOMMENDATIONS OF THE PRINCIPLE

3.1. Accurately Define the Scope of Public Interest

The public interest and the administrative relative's reliance interests belong to the category of interests, and are not objectively existing things. This means that subjectivity plays a great role when administrative organs measure interests. Because the scope of public interest is too large, it is difficult to define public interest correctly by simply relying on one defining body, therefore, the legislative organ, administrative organ and judicial organ should jointly define public interest, in which the legislative organ determines the matters of public interest through the form of legislation, and the administrative organ makes the specific judgement according to the law formulated by the legislative organ in dealing with the administrative affairs, and the administrative organ makes the specific judgement when the administrative organ and the administrative relative in the administrative legal relationship. When the dispute and conflict between the administrative organ and the administrative relative arises in the administrative legal relationship over the establishment or non-establishment of public interest, the judicial organ will conduct the ultimate review and judge the factual reasons of both sides, and ultimately decide whether or not the public interest is established. China's legislative definition of public interest is still in the blank stage, the administrative organs for the definition of public interest is more common, especially in the field of land expropriation, and the administrative organs of the land expropriation of the procedural content of the provisions, such as expropriation of the initiation procedure, approval procedures are specified by the administrative organs. The administrative organ is the object of regulation of the principle of protection of reliance interests, if the administrative organ is authorised to define the specific matters of public interests, this is undoubtedly to connive at the administrative organ's arbitrary exercise of the administrative power of revocation and repeal, and to use the legal act of 'public interests' to cover up the illegal purpose of changing the order, and also to expand the discretionary power of the administrative organ. It also expands the discretionary power of the administrative organ, leading the administrative organ to arbitrarily define the scope of public interest to counter the trust interests of the administrative relative. The administrative organ is the main body that makes the administrative act, and has the legal right of revocation and annulment, therefore, the administrative organ should maintain the principle of avoiding the issue of defining public interest. To sum up, for the definition of public interest in our

country, the right of judgement should firstly be handed over to the legislature, which adopts the mode of 'enumeration + underlining' to make specific provisions for the public interest in our country; the administrative organs in the process of administrative law enforcement according to the specific circumstances of the law on the scope of public interest; when the administrative relative of the public interest in the administrative act, the administrative organ should keep the principle of avoidance. Judgement; when the administrative relative is not convinced of the establishment of public interest and files a lawsuit, the administrative organ shall bear the burden of proof for the existence of public interest, and the judicial organ shall conduct the ultimate review of the establishment or otherwise of public interest according to the specific facts of the case. It is worth noting that the 'public interest hearing' should be regarded as a mandatory part of the definition of public interest, so as to safeguard the citizens' right to participate, right to know and right to object, and to prevent the abuse of the right to define public interest.

3.2. Refinement of the Provisions on Compensation or Indemnity

When applying property protection to the administrative relative's reliance interests, because it directly involves the property rights and interests of citizens, the standards for property compensation must be taken seriously. Refinement of property compensation standard for administrative relative person's trust interest is crucial, once the administrative organ illegal revocation of administrative act to administrative relative person's trust interest caused by property loss, clear and specific administrative compensation standard can achieve the maximum protection of trust interest, so as to repair the administrative organ and administrative relative person's conflict and contradiction between the administrative organ and the administrative relative person's trust interest of the realisation of the realization of the society. Fairness and justice, maintain the credibility of the government, and promote the construction of honest government. The criteria for administrative compensation are divided into actual losses and actual inputs, i.e., the amount of government compensation shall not be less than the amount of compensation for lawful expropriation. In determining the scope of compensation or indemnity, the balance between private and national interests should be reasonably defined; firstly, according to the objective situation, the administrative relative's direct loss should be compensated accordingly, and there is little dispute over this aspect of the loss in judicial practice. Secondly, for the administrative relative in the original administrative act under the effective state of the benefits can be reasonably defined, finally, should grasp the compensation is not less than the standard of compensation, increase the cost of administrative organs in violation of the law. Otherwise, it will easily lead to the formation of administrative organs to arbitrarily carry out illegal expropriation mentality, which will not only exacerbate the contradictory disputes between the government and the public, but also have a negative impact on the integrity of the government's construction.

3.3. Clear Accountability Mechanism

The public will arrange their lives and dispose of their rights according to national laws and policies based on the recognition and trust of the state and the government. If the government arbitrarily changes the policies that have come into effect, and if the policies are frequently changed and erratic, the public will not be able to engage in social activities according to the national policies and will lose their trust in the state and the government. An important reason for the lack of integrity of administrative organs lies in the lack of an effective mechanism for checking and balancing power. While providing services to the public, the administrative authorities have also spread their administrative power over all aspects of society, which can easily lead to the expansion of administrative power and breed corruption. When an administrative organ loses its credibility, the trust between the government and the public will be broken, the work of the government will be difficult to carry out, and the social order will be disrupted. The most effective way to deal with the administrative authorities' reckless exercise of administrative power is to increase the cost of

administrative authorities' breach of trust, establish a clear accountability mechanism, and put the responsibility into practice, so as to form a full range of constraints and supervision of administrative authorities in the administrative legal system.

4. CONCLUSION

With the goal of building a government of integrity, service and the rule of law in China deeply rooted in people's hearts, it has gradually strengthened the understanding and application of the principle of protection of reliance interests in administrative law. The application of the principle of protection of reliance interests, the 'power in the cage,' the cost of the government's breach of trust increased, so as to urge the administrative organs in accordance with the law, improve administrative efficiency, stabilise the social order, and is more conducive to further promote the integrity of government and the rule of law in China's government construction.

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