

Research on the validity state of illegal administrative agreement

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Abstract: *In civil law, the judgment of the validity of contract and the judgment of legality are integrated, and a contract that is considered illegal is absolutely invalid. We only know the theory of property obligation dichotomy, and have never thought that legality and validity can be viewed separately. This guiding case issued by the Supreme Court also gives us a deeper understanding of administrative agreements, which are very different from civil contracts. Therefore, the author hopes to draw out the judgment criteria for the validity of illegal administrative agreements from this guiding case.*

Keywords: *Administrative agreement; be illegal; potency state*

1. Introduction

According to the provisions of Article 143 of the Civil Code, civil juristic acts that meet the following conditions are valid: (1) the actor has the corresponding capacity for civil conduct; (2) the expression of intention is true; (3) the mandatory provisions of laws and administrative regulations are not violated, and the public order and good customs are not violated. This is the Civil Code for the effect of civil legal acts, can also be said to be the effect of civil contract provisions, if a civil contract meets the above requirements, it is a legal and effective contract. Then we can extract the specific requirements of legality and validity of civil contracts, that is, (1) does not violate the mandatory provisions of laws and administrative regulations (2) does not violate the public order and good customs (3) both parties to the contract have the corresponding capacity for civil conduct (4) the intention of both parties is true. From the legal and effective elements of the contract, we can see that the most important thing for a civil contract is to comply with the law. Only on the basis of legality can we discuss the following elements. An illegal civil contract is impossible to be effective, and legality is the prerequisite for judging whether a civil contract is effective. ^[1]However, when we take this point to look at the administrative agreement in the administrative field, it seems to be unfeasible, an illegal administrative agreement, if it meets other requirements, does not prevent the administrative agreement from taking effect, which is quite different from the judgment criteria for the effectiveness of civil contracts. Why can an administrative agreement, which is also a contract, continue to move forward and come into effect after it has been judged illegal?

2. Summary of the case

On May 18, 2012, the Office of Anji County Party Committee and the Office of Anji County People's Government issued document [2012] 61 of the Office of Security Commission to establish the Management Committee of Anji Lingang Economic Zone (hereinafter referred to as the Lingang Management Committee). On December 30, 2013, Anji County Establishment Committee issued a document to revoke the Lingang Management Committee. On November 18, 2015, Huzhou Zhenxin Asset Evaluation Co., Ltd. was entrusted by the Management Committee of Anji Lingang Economic Zone (hereinafter referred to as the Lingang Management Committee) to evaluate the assets of Anji Zhanpeng Metal Precision Foundry (hereinafter referred to as Zhanpeng Foundry), and issued the "Asset evaluation Report" for the purpose of demolition compensation. On January 22, 2016, the Lingang Management Committee and Zhanpeng Foundry reached an "Enterprise relocation Compensation Agreement" on the relocation of enterprises, agreeing that the Lingang Management Committee would settle the enterprises in monetary form, and the total amount of relocation compensation would be 1131,650 yuan. ^[2]After signing the agreement, both parties to the contract performed their obligations in accordance with the agreement. On July 12, 2017, Zhanpeng Foundry filed a lawsuit with the People's Government of Anji County as the defendant, requesting that the specific administrative acts of the

"Enterprise Relocation Compensation Agreement" made by the defendant should be revoked, and ordered to re-sign the relocation compensation agreement with it in accordance with the law. Zhanpeng Foundry believes that the Lingang Committee still signed a contract with the foundry in the name of the Lingang Committee after it was revoked, which violated the provisions of the administrative Law on the subject and was illegal. Zhanpeng Foundry believed that the illegal administrative agreement should be invalid, so it asked the Anji County government to re-sign the contract. But the Anji County government argued that the agreement was entered into on a consensual basis and had been fulfilled, so it was valid. After the trial of the court of second instance, the administrative agreement is both administrative and contractual. Based on the dual character of administrative agreement, the principle of full process supervision and double review and double judgment should be adhered to in judicial review of administrative agreement cases. In the process of examination, it is necessary to examine not only the validity of the contract of the administrative agreement, but also the legality of the act of the administrative agreement, especially the act of signing, performing, changing and rescinding the administrative agreement. In this case, the court of first instance and the court of second instance held that the Lingang Committee still signed the contract after being cancelled, and the Lingang Committee was no longer qualified to sign the administrative agreement, but it still signed the administrative agreement with Zhanpeng Foundry, which is an illegal administrative agreement in the main illegal.^[3] However, the agreement is signed on the basis of both parties voluntarily, and has been performed, so this agreement after the ratification of the Anji County people's Government, the effect of the agreement should be retained. The court therefore rejected Zhanpeng Foundry's request to re-sign the agreement.

3. Summary and classification of the effectiveness of illegal administrative agreements

3.1. An overview of the effectiveness of administrative agreements

The administrative agreement in administrative Law is as follows: it refers to an agreement with citizens, legal persons or other organizations that has rights and obligations under administrative law and is concluded through consultation between administrative organs and citizens, legal persons or other organizations in order to achieve public interests or administrative objectives. It is not difficult to see from the definition that administrative agreement also has civil attributes, so administrative agreement and contract in civil law have many similarities, for example, they must be the true expression of the intention of both parties, and there are also many differences, for example, the two parties to the contract are completely equal civil subjects, but the administrative agreement must have a government agency. It is these similarities and dissimilarities that make the administrative agreement comply with the relevant provisions of both civil law and administrative law. So what can happen to make an administrative agreement fall under the category of illegal? To answer this question, we must first take a look at the four elements of the administrative agreement, namely, the main element, the purpose element, the content element and the meaning element. An administrative agreement that meets the four elements at the same time is a legal administrative agreement. If one element is not satisfied, then it is an illegal administrative agreement. According to this, we can conclude that the causes of illegal administrative agreements are: (1) the subject is illegal, that is, the government organ that signed the administrative agreement does not have the subject qualification, and the agreement signed by the government subject that does not have the subject qualification is an illegal administrative agreement. (2) The purpose is illegal, that is, the purpose of the administrative agreement is not for the public interest, but for the interests of individuals, then the administrative agreement is also illegal. (3) The content is illegal, that is, the content of the administrative agreement violates the mandatory provisions of the law or administrative regulations, violates the public order and good customs, and the administrative agreement is also illegal at this time. (4) Meaning elements, that is, the administrative agreement is not signed on the basis of consensus between the two parties, there is fraud, coercion and other circumstances, the administrative agreement is also invalid. ^[4]As mentioned above, administrative agreement and civil contract are not exactly the same. The legality and validity of civil contract are unified, but the legality and validity of administrative agreement are not unified. Although it is not uniform, the administrative agreement with the nature of civil contract should also abide by the provisions of civil law on the validity of the contract. Therefore, I believe that the judgment of the administrative agreement should be based on the four elements mentioned above. If all of them are satisfied, it is a legal and effective administrative agreement. If not, then this is an illegal administrative agreement.

3.2. Classification of the validity of illegal administrative agreements

As mentioned above, the administrative agreement that violates the four elements of the administrative agreement is illegal, so why should we discuss the validity of an illegal administrative agreement? Why can't the illegal agreement be directly invalid like a civil contract? Since one party to an administrative agreement is an administrative organ and the other party is an ordinary party, the administrative organ is not equal in status compared with the ordinary party, and the administrative organ signs an administrative agreement for the public interest. If the administrative agreement can be revoked or declared invalid at will like a contract, the loss of public interest will be caused. Such loss is not allowed in the administrative agreement, so even if it is an illegal administrative agreement, the court will judge whether the public interest will be lost if the agreement is declared invalid based on the illegal degree of the agreement. Therefore, an administrative agreement should not be declared invalid easily, and the judge should protect the public interest to the greatest extent and ensure that citizens' rights and interests are not infringed. [5]

3.2.1. An administrative agreement whose purpose is illegal

Although the administrative agreement is not exactly the same as the civil contract, in order to better protect the public interest, the illegal administrative agreement cannot be directly invalid like the civil contract, but if there is a major illegal cause in the agreement, then the illegal administrative agreement will be invalid. For example, if the purpose element of the four elements is violated, that is, when the contract was originally concluded, it was not for the public interest, but for the use of power for personal gain and to steal national interests, these are the purpose violations of the illegal causes, which are major and serious violations. Such violations will damage the interests of the public, so such agreements are of course invalid.

3.2.2. An administrative agreement in which the subject is illegal

In addition to the obvious and major causes of violation mentioned above, there are also some causes that will lead to the violation of administrative agreements, such as the violation of the subject among the four elements. The subject violation means that the government organ signing the administrative agreement does not have the subject qualification, and the signing of the administrative agreement with the other party without the subject qualification is a subject violation. In the case of Zhanpeng Foundry v. Anji County People's Government mentioned in the introduction, the Lingang Committee that signed the agreement with Zhanpeng Foundry still signed the agreement with Zhanpeng Foundry in the name of Lingang Committee after losing the subject qualification, which obviously belongs to the subject violation of the illegal causes. Although the court found that the main body of the Lingang Committee violated the law, it did not revoke the compensation agreement signed by the two sides, but found the agreement valid. The reason given by the court is that although the "Enterprise relocation compensation Agreement" involves the main illegal, but does not violate other effective elements, the agreement is a true expression of the intentions of the two parties, and has been performed, so the agreement is valid. In this case, the conduct of the Lingang Committee is subject to illegal, which makes the entire agreement fall under the category of illegal administrative agreements, so why is an illegal administrative agreement classified as valid? Because the "Enterprise relocation Compensation Agreement" is indeed the true intention of the two sides, and has been fulfilled, if the subject is overturned again because of the law, it is bound to waste more social resources and damage the social public interests, the judge made such a judgment after the trial is also to protect the social public interests. Therefore, if an administrative agreement involves the subject's violation of the law, then we need to examine the severity of the subject's violation. If only the subject's violation exists, and the cancellation of the administrative agreement will cause loss of public interests, then the illegal agreement can also become an effective agreement.

3.2.3. Administrative agreements with illegal content

An illegal administrative agreement, if the illegal part is his content, that is, the content of the administrative agreement violates the mandatory provisions of laws or administrative regulations, or violates the public order and good customs, then the illegal administrative agreement is invalid. Compliance with laws and regulations is the minimum obligation of every citizen. If the content of an administrative agreement is the sale of guns, drug trading and other contents that violate the law, then the agreement will naturally harm the public interest, so such an administrative agreement is of course invalid.

3.2.4. Administrative agreements intended to violate the law

Both civil contracts and administrative agreements should follow the principle of autonomy of will, that is, both parties should sign an agreement on an equal and voluntary basis and negotiate the content

of the agreement. If an administrative agreement is not signed on the basis of equality and voluntary, but there is fraud, coercion and other acts, then the administrative agreement is not the true intention of one of the parties, such an agreement is naturally illegal and invalid.

4. The criterion of judging the validity of illegal administrative agreement

4.1. Whether it is a major cause of violation

Through the above analysis, we have roughly concluded that whether an illegal administrative agreement is effective, we should first look at what is the cause of the illegal, if it is a major cause of illegal, then the agreement is an illegal and invalid agreement. So what should be the definition of major and illegal? In my opinion, we should refer to the provisions of civil law on invalid causes, that is, (1) the administrative agreement whose intention is not true should be a major illegal cause. Whether it is an administrative agreement or a civil contract, it must respect the real will of both parties, if an administrative agreement is signed under duress and fraud, it is a serious violation of the voluntary principle and a major illegal cause. (2) Maliciously colluding to damage the public interest of the administrative agreement is also a major illegal cause, should be classified as invalid category. The original intention of an administrative agreement is to protect the social public interests, if an administrative organ and the parties maliciously collude, attempt to steal state resources or divide up state-owned assets, this is not allowed, should be classified as a major illegal causes, the effectiveness of the administrative agreement is also invalid. (3) Violation of mandatory provisions of laws or administrative regulations, no matter what the circumstances, mandatory provisions are never allowed to violate, and violations of mandatory provisions should be classified as invalid.

4.2. Whether it is conducive to the protection of public interest

If the cause of violation of an administrative agreement is not a major cause of violation, then the judgment of whether it is effective should fall on whether it is more conducive to protecting the public interest. Judges should not be too quick to dismiss agreements as invalid if the cause is a minor offence and a valid judgment of the agreement is in the interest of protecting the public. For example, in the case of Zhanpeng Foundry v. Anji County People's Government relocation administrative agreement in the introduction, the Lingang Committee that signed the agreement with the foundry did not have the qualification of the subject, which is an illegal cause, but in this case, there is no defect in terms of the authenticity of the expression of meaning or the authenticity of the asset evaluation report, except for the reason that the subject is illegal. If the judge decides that the agreement is invalid because the subject violates the law, it will need to make a new asset assessment report, wasting more human and material resources and social public resources. Therefore, if an effective judgment is more conducive to protecting public interests on the basis of minor defects, a judgment with effective administrative agreement should be made. Of course, declaring the agreement valid does not affect declaring the administrative act illegal. This should be a very special existence in administrative agreement, and let us see that administrative agreement and civil contract are identical but not identical.

4.3. Whether there are major procedural violations

The reasons mentioned above are to review the content of the case, in addition to the content of the review, we should also focus on the procedure. In administrative law, procedural legality is also a very important part, so after examining whether it is a major cause of violation and whether it is conducive to the protection of public interests, we should also focus on whether there are major procedural violations when the administrative organ makes this decision. If an illegal administrative agreement is due process and there are no major illegal causes, making a valid judgment is more conducive to the protection of the public interest, then the court should find this administrative agreement valid.

5. Conclusions

The difference between the legality and validity of administrative agreement and civil contract is the biggest feature of administrative agreement, and it is this feature that makes administrative agreement present a different judgment of illegal but effective. However, the current law has no clear provisions on how to judge the validity of illegal administrative agreements, and we can only find and summarize from some cases that have been decided, in order to fill the legislative gap in the judgment of the validity state

of illegal administrative agreements.

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