

Administrative discretion abuse of regulatory measures

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Abstract: In recent years, with the rapid development of society, the significance of administrative discretion has become increasingly apparent. It exists to serve and facilitate the people, and it can improve administrative efficiency. However, the abuse of administrative discretion still exists, as evidenced by the expansion of administrative power, the perceived unfairness of administrative punishment, and the passive response of administrative bodies. Therefore, in order to address the aforementioned issues, China needs to implement a series of measures to regulate administrative discretion, improve its discretionary standards, and control its scope efficiently. Enhance the supervision mechanism and intensify oversight to ensure that administrative discretion genuinely benefits the people.

Keywords: Administrative discretion, Abuse, Regulation

1. Introduction

In the mainland of our country's mainland, the concept of administrative discretion is basically consistent with other mainstream views, and that administrative discretion should be exercised within a certain range of legal provisions under the premise of legality, and it is a type of action selected and carried out by the administrative body. Sometimes the judiciary can also fully reflect administrative discretion. How to avoid the administrative discretion of the "Cross-border" and abuse has become the key to the future development of administrative power. Today's social status quo has inevitably derived from administrative discretion, but due to many aspects of the regulatory mechanism not being perfect, it results in the abuse of administrative discretion, leading to a negative impact. Therefore, it is necessary to regulate the abuse of administrative discretion.

2. The related theory of administrative discretion

Every executive branch of our country performs its duties in strict accordance with the laws and regulations. In the course of carrying out their duties, troublesome and unexpected situations will always arise. There will be various ways to deal with them, so executive branch discretion is granted by law under different circumstances.

2.1. The concept of administrative discretion

By enumerating the various manifestations of discretion, we can gain a clearer understanding of the challenges the executive branch faces in exercising it, as well as the different characteristics of administrative discretion in our country. There are three forms of expression: first, the exercise of discretion according to different circumstances, and specific analysis of specific issues. The executive branch analyzes the actions of the administrative counterpart and makes various judgments based on the seriousness of the situation. Second, discretion in accordance with the law. But our country does not have specific and clear regulations regarding this actor's behavior; only some standards have been stipulated. For example, the term of administrative detention in administrative punishment is "up to 15 days," as stipulated by law. However, the specific duration of detention is determined by the executive branch based on the behavior of the administrative counterpart. In our country, administrative discretion is essentially a range of choices that can only be exercised within the boundaries of the law, rather than being undefined acts of self-determination.^[1] Third, we should judge according to the diversification of the behavior of the administrative counterpart. In this case, administrative experience is particularly

important. Regulating conduct without the law also tests the administrative ability of the executive branch

2.2. The necessity of the existence of administrative discretion

Our country's political, economic, and other aspects of development have entered a new stage. The significant material prosperity has also promoted the rich and diverse ideological and cultural, at the same time, the number of social affairs has increased exponentially. This requires greater expertise and flexibility from executive branch staff, leading to the emergence of administrative discretion. First, as far as the law is concerned, it can only be seen as a reference point for administrative discretion. It only provides general provisions for a part of the acts and does not specify them, nor is it enough to executive branch a problem-by-problem analysis of the actions of all administrative counterparts. By observing the current implementation of the administrative discretion benchmark system, this paper argues that the administrative discretion benchmark system as a constraint on administrative discretion rules control method is inadequate. [2] administrative discretion, as a highly flexible right, provides a legitimate method for the executive branch to resolve administrative issues. Second, the law can only be a general provision to regulate the Universal Act, in the face of certain special circumstances, it is often helpless. Our country is vast, with a large country with a vast territory and a significant population. The economic and cultural levels of various places are uneven, and the standards of law enforcement standards. One-size-fits-all law enforcement obviously does not conform to local conditions, our country is at a critical stage in the modernization of the governance system and capacity. The most suitable approach is to recognize the justice of individual cases and uphold fairness and justice by exercising discretion. Finally, the population of our country is huge, and the administrative tasks that need to be dealt with every day are innumerable, raise administrative efficiency. In order to ensure administrative efficiency and maximize administrative efficiency by manipulating a minimum amount of capital, executive branch discretion can guarantee higher efficiency, especially in the face of unexpected situations, the importance of administrative discretion is doubly highlighted.

3. The abuse of administrative discretion in our country

The exercise of administrative discretion in our country must follow the principles of "rationality, fairness, moderation, and objectivity", which endow the executive branch with a high degree of freedom of will. In the exercise of executive branch discretion, subjective factors occupy the majority, with the individual will of discretion, there is no lack of the same behavior of the treatment results vary greatly.

3.1. The exercise of administrative discretion lacks a unified standard, and arbitrary expansion leads to the abuse of power

First of all, our country only outlines the relevant rules of administrative discretion in a general manner. The executive branch process often involves a lot of things that cannot be precisely judged in detail by the application of the law, this means that discretion must exist in the life of the rule of law. However, the law allows for greater flexibility in the exercise of administrative discretion, the lack of uniform standards, the decision of the standards to a certain extent in the hands of the executive branch, leading to the abuse of certain powers. Some decisions made by the executive branch were not based on a legitimate purpose and were made against the public interest.

Because of the absence of a unified standard of administrative discretion, the benchmark of administrative discretion is in a daze, the administrative discretion becomes legitimate, and these rights are given the legal appearance of administrative discretion, arbitrary expansion of power, some executive branch in the law enforcement process to escape the administrative discretion of the benchmark, and even executive branch staff for self-interest, retaliation, corruption. Of course, the use of loopholes is inevitable and even necessary in order to achieve individual justice, but throughout the laws and regulations, there is no specific provision regarding the scope of application of specificity also encourages the executive branch to exploit loopholes freely, leading to arbitrary expansion of power. Such actions could significantly tarnish the reputation of the executive branch, The underlying cultural values.

3.2. The administrative punishment is obviously unfair

The highest pursuit of the law is fairness and just, but the real law enforcement can be due to subjective and objective reasons for unfair sentencing, which are inevitable. The existence of the

discretion of administrative punishment is reasonable and lawful, as demonstrated in various important aspects such as the range, manner, time limit, plot, and determination and other important aspects. For example, some executive branch, or find reasons to drag, just to avoid the discretionary benchmark system of the “Cocoon”^[3]. In the specific process of administrative punishment, the executive branch has wavered in the application of laws and regulations. Even in the course of handling cases, they have been tight-lipped about the existence and details of the discretionary benchmark text.

3.3. Negative executive branch

At the present stage, there are time limits specified in the Administrative License Act and the Administrative Protection Act, but the time limits are sometimes vague and unclear, thus giving the risk of delays or even rejections of administrative actions.^[4] Such as the executive branch “Kick each other's ball”, or shirking responsibility, leading to administrative counterparts have no way to help, and so on. The existence of spatial flexibility in administrative discretion often leads some executive branch “Look at people and see what they can do,” taking into account the relative person's economic status, social background, etc., led to a series of cases of administrative inaction.

4. The regulatory countermeasures of administrative discretion

In order to ensure the steady operation of society and protect the interests of the masses, we must take reasonable measures to regulate the abuse of administrative power. It has no legal significance for the court to judge the relationship between the state and the citizen. Therefore, administrative discretion should be regulated in all aspects.

4.1. Strengthen legislative regulation to prevent abuse of power

The degree of the use of administrative discretion is uneven. In many administrative law enforcement or other administrative acts, will be applied to the administrative discretion.^[5]

4.1.1. We will strengthen the interpretation of legislation

We should enhance the process of legislative interpretation, scientifically define the fuzzy boundary of administrative discretion in law, clarify its extension, and provide a reasonable legislative interpretation. Although our country's laws are not specific and comprehensive, and may result in different outcomes when they are implemented, we can address this deficiency through legislative interpretation, improve the discretionary space to prevent abuse of power.

4.1.2. Improve local laws and regulations, adapt to local conditions

Our country is large and diverse, with many nationalities. The economic development level, customs, and habits vary across different places are different, and the standard of judging the same thing. If only the use of the same set of laws and regulations can never fully meet the diverse needs of all regions, therefore, sound local laws and regulations is inevitable. Local governments and People's Congresses of all provinces and cities should formulate appropriate local laws and regulations in accordance with local conditions, laws, and principles of fairness and justice. Administrative discretion achieve a law to fill the gap, and curb corruption in the use of the process.

4.2. We will strengthen supervision over administrative law enforcement and ensure the fairness of administrative penalties

With the development of society and the emergence of new demands, it is essential to enhance the oversight of administrative law enforcement. It is also an important measure to correct the party conduct. Despite various reasons, our country's administrative law enforcement agencies still have many unfair problems in the process of law enforcement, and some have seriously damaged the interests of the people.

4.2.1. Establish a strict system of supervision and restriction

Power is more important than law, and corruption still widely exists in administrative activities. This will inevitably affect our legal system construction, the lack of oversight of power will inevitably foster corruption. Therefore, we must ensure that there is a law enforcement. Violations of the law must be investigated, to uphold the fairness of administrative penalties. First of all, we should strengthen the internal level of supervision, and then strengthen special supervision such as administrative supervision,

and finally strictly enforce the separation of penalties. If a perfect mechanism of supervision and restriction is established, the public security organs will be more cautious when dealing with the Baotong's case. They will carefully consider and choose the discretionary outcome that best conforms to the legislative intention within the boundaries of the law, so as to ensure the punishment appropriate.

4.2.2. Improve the openness of government affairs, take the initiative to accept the supervision of the people

In some administrative cases, certain law enforcement officials do not have the courage to accept supervision despite the public's right to know, which is contrary to the purpose of serving the people. First of all, we should make all types of government information accessible to the society and the people to make it more convenient for individuals seeking government information. We should also put the open government affairs in an important position, from the actual point of view, improve the open government affairs information system, and achieve a general to a specific transformation. Secondly, we should enhance the dissemination of laws and regulations and improve formal education for the public. We should actively guide people to exercise their right of supervision, strengthen their awareness of supervision, and consider the exercise of these rights as a habit and a normal life.

4.3. Executive branch internal regulation to combat administrative inaction

The internal regulation of the executive branch is particularly important in a society governed by the Society of rule of law. The exploration of self-regulation of executive branch is a kind of regulation of one's own responsibilities. Only if the internal regulation is well established, can we cooperate more effectively with external regulation, and our country's legal construction can be further.

4.3.1. Improve the quality of administrative staff

Administrative discretion is the right to exercise "Discretion" in the scope of law and its principles, its essence is freedom, but it is also the reason for its regulation. [6] we can start from the following aspects: (1) taking an oath within a specified period of time. (2) Raise the threshold for admission to administrative positions and carry out strict selection of administrative staff. (3) Increase the study of ideological education courses for the staff. With a firm grounding in theory, we can be firm in politics, can distinguish between right from wrong, can keep a clear mind and a high level of political sensitivity, and grasp the correct political direction.

4.3.2. We will improve the administrative system and mechanisms

We should start with the internal system of the executive branch, purifying the system, and enhancing the issue of administrative inaction. Concrete measures: (1) to establish a mechanism for power decentralization. Because centralized power will inevitably lead to its abuse, it must be divided into rights. (2) Refer to administrative guidance cases. The executive branch can rely on the authoritative Supreme People's Court to guide the conduct of administrative acts, to better achieve fairness and justice, and to successfully defend the interests of the people by systematizing and compiling cases, to avoid Abuse of authority or arbitrary actions.

5. Conclusions

With the development of the economy and society, the law may not always meet the demands of modern administrative affairs. The significant role of administrative discretion is beyond doubt, especially in the rapid development of the society, as well as a variety of judicial practice can be fully demonstrated. In many administrative departments, administrative discretion plays an important role. Although our country's administrative discretion still has many places to ponder over and to be deliberated, there is still a long way to go to achieve the true rule of law. But anything, no matter how big or small, its development and progress cannot always be satisfactory, and always needs to go through some difficult process. Perfect administrative discretion is the same. Only through continuous efforts, constantly overcoming all kinds of difficulties, bravely facing challenges from all aspects, can it be constantly improved, make continuous progress, and ultimately better construction of a rule of law country.

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