On the Perfection of the Administrative Reconsideration System and Procedure in China

Shuyu Li*, Lu Liu, Kaina Feng

North China University of Science and Technology, Hebei, China.

Abstract

The administrative reconsideration system plays an important role in preventing and correcting illegal or improper specific administrative acts, protecting the legitimate rights and interests of citizens, legal persons and other organizations, and protecting and supervising the administrative organs to exercise their functions and powers according to law. And administrative reconsideration procedure is an important link of the administrative reconsideration behavior and an important guarantee. But with the continuous development of social demand in our country, new situation is constantly produced, the defects of the administrative reconsideration system of procedural impartiality are constantly exposed, to further improve, to truly achieve through fair justice reconsideration process to safeguard the legitimate rights and interests of citizens system design. In the process of the reform of the administrative reconsideration system, it has always been accompanied by the characteristics of the development of the times. With the advancement of the national system reform, the revision of the Administrative Reconsideration Law and the construction of the administrative reconsideration system reflecting the characteristics of the new era are the key steps of the current administrative reconsideration system reform.

Keywords

Administrative review procedure, procedural justice, legitimate rights and interests, improvement

1. Summary

Chinese administrative reconsideration system is based on hierarchical supervision of administrative relief system, refers to the citizens, legal persons or other organizations think the specific administrative subject of illegal or improper infringement of their lawful rights and interests, in accordance with the competent administrative authority for review of the specific administrative act, administrative reconsideration authority in accordance with legal procedures for the specific administrative act of legitimacy, appropriateness review, and make the administrative reconsideration decision of a legal system (Fang Jun, 2003). With the development of the rule of law process in our country, China's administrative reconsideration system is constantly changing with the vigorous development, but the change of China's national conditions development also constantly put forward higher, updated requirements, the current system operation program drawbacks and defects constantly exposed, need to through further reform and innovation to improve and development.

1.1 The concept of the administrative review system and procedures

The procedure of administrative review refers to the sum of the steps, forms, order and time limit of the administrative review applicant to apply to the administrative review organ to make the
reconsideration decision.

Specifically, it can be divided into four major links: the application, acceptance, trial and decision of administrative reconsideration. Among them, the application for administrative review includes the process of determining the correct reconsideration authority, calculating the time limit for the application, submitting the application, and checking the application for restriction, including the acceptance of the submitted materials, accepting and transferring the application, and the administrative review includes the preparation, the review, the evidence and basis, the need of withdrawal, suspension, termination, and reconciliation or mediation. Thus it can be seen that the administrative review procedure is an important link of the administrative review behavior, and also an important guarantee for the legal and efficient implementation of the administrative review (Zhou Hanhua, 2005).

1.2 Characteristics of the procedure of the administrative review system

1.2.1 It is a kind of institutionalized procedure initiated upon application

Start of administrative reconsideration system program, must be based on the application of citizens, legal persons or other organizations, when the relative person to the specific administrative act, think specific administrative act illegal or not at that time, will make this application, request the administrative reconsideration authority to review and correct in accordance with the law. If there is no such application, administrative subject can not take the initiative to start the process of administrative reconsideration (Wang Xixin, 2007). Different from when the administrative subject finds that the specific administrative act made by the subordinate administrative subject is illegal or irregular, it can change or cancel the specific administrative act according to law based on the supervision and leadership of the subordinate administrative organ by law, but this is not an administrative review, but the general supervision of the superior to the lower level.

1.2.2 It has obvious characteristics of administration

The subject of the trial decision on the application for administrative reconsideration is the administrative organ at the same level or higher level. From the essence of the administrative reconsideration act, it is the self-supervision and error correction of the specific administrative act made by the administrative organ (Yang Jianshun, 2007). Its complete operation process and even design operation mode, has the typical characteristics of administrative behavior, and the decision of administrative reconsideration specifically responsible for the main body is mostly from the administrative organ internal legal system category, so, fundamentally, the procedure of administrative reconsideration system is not with the category of administrative behavior. It can be seen that the operation of administrative review procedure has obvious integrality and has the characteristics of administration.

2. The present situation and causes of the administrative reconsideration system and procedure in China

2.1 The current situation of the administrative review system and procedure

China's administrative reconsideration system was built in the early days of the People's Republic of China. The relevant provisions were first found in the Measures of the Ministry of Finance for the Establishment of Inspection Organs published in 1950. In the 1980s (Wang Wanhua, 2011), with the continuous acceleration of the socialist democracy and the legal system construction in China, the administrative review system has had a great development. The number of laws and regulations that stipulate the administrative review content is increasing, but lacks a systematic regulation of the administrative review system of the law. In 1989, after the promulgation of the Administrative Procedure Law, to adapt to and cooperate with the implementation of the administrative litigation system, the State Council formulated and promulgated the Administrative Review Regulations in December 1990 to further standardize, improve and develop China's administrative review system. By April 1999, China had enacted the Administrative Review Law of the People's Republic of China.

In recent years, the administrative reconsideration system in our country, has been preliminarily established, and the effectiveness of the administrative reconsideration process also gradually appeared. However, in the rapidly changing era, although now China's administrative reconsideration system has convenient, efficient, no charge, but the disadvantages of the program are obvious, the characteristics of unfairness and injustice make the administrative relative person when considering whether to seek the relief of administrative reconsideration system to protect their rights and interests are still concerned (Shi Youqi, 2007).

According to experts: "If the system itself has no major flaws, and its implementation and guarantee mechanism
has also been implemented, the number of cases of administrative reconsideration should greatly exceed the number of cases of administrative litigation” (Li Juan, 2000). But the fact is not so, the current situation of administrative review procedures in China is not satisfactory, there is obvious injustice, for some cases can not be solved or not fair enough, so the administrative relative people will naturally seek a more efficient, fair and accurate dispute resolution system. Through the implementation effect of the administrative reconsideration system in recent years, its due institutional advantages have not been given full play. According to the original intention of building this system, the application of this system should be at least two to three times higher than the acceptance of administrative litigation cases. Therefore, the need to improve still has a long way to go.

2.2 Insufficient procedures and causes of the administrative review system

2.2.1 There are some deficiencies in the trial procedure of administrative reconsideration in China

Administrative reconsideration trial refers to the activities in which the reconsideration organ conducts a comprehensive examination of the specific administrative act of the respondent after accepting the reconsideration application. It is the substantive review stage of the administrative review, and also the key and core of the administrative review procedure. Without the trial of administrative dispute cases by the administrative review organ, the administrative dispute cannot be resolved, and the administrative review organ cannot make a reconsideration decision. Therefore, the trial procedure of administrative reconsideration should be a flexible and changeable procedure, and there should be different trial procedures for different types of cases, so as to ensure fairness and justice and improve the efficiency of the trial.

However, the trial of administrative reconsideration in China adopts a single written trial, whose purpose is to simplify the trial process and improve the efficiency of dispute resolution, but it ignores the requirements of procedural justice. First, the written trial does, to some extent, be more efficient. But in complex and difficult cases, this mode of hearing would hinder the full submission of the evidence by the parties, making the authenticity of the case ambiguous, thus increasing the difficulty of administrative reconsideration personnel to hear cases; Next, the way of written hearing makes the statement and defense right of the parties unable to be fully exercised under this system, makes the administrative reconsideration personnel and the parties, the parties are not sufficient and effective communication, easy to cause misunderstanding, failure to result in the ruling of administrative reconsideration. There are the adverse consequences of neglecting the essentials.

2.2.2 The administrative review procedure is too single and the administrative characteristics are obvious

The procedure of administrative reconsideration should be rigorous and scientific. Different types of cases should correspond to different modes of reconsideration procedure, and the rules of evidence and other systems should also be changed accordingly, in order to achieve the purpose of procedural justice and improve efficiency (Wang Xuehui, 2002). But at present the administrative reconsideration system is not according to the case facts is simple or complex, the amount involved is big or small situation to design different running procedures, such as summary procedure, written procedures, strict procedures, etc., but only adopted a single written mode, only when the applicant request or reconsideration agencies think necessary can implement trial or hold a hearing. This single trial procedure is obviously unable to meet the actual needs of our country, and the future should be explored toward the direction of diversified administrative review procedures.

Because the nature of the administrative reconsideration organ in China is an administrative organ, it has the obvious characteristics of "administration" and lacks the independence it should have. Therefore, in the process of administrative review, if there are problems in one of the links, other procedures will naturally be delayed, and a case will be subject to layers of examination and approval, which is obviously contrary to the principle of convenience and efficiency pursued by the administrative review system.

2.2.3 Lack of participation principle of the parties

From the perspective of the running of the administrative reconsideration program in our country, because generally only use a single written way, makes the administrative organ can only from the written information to review the specific administrative behavior is reasonable legal, but this program is obviously unreasonable, because if only rely on the administrative organ internal self examination and supervision, will inevitably appear bias, at the same time due to the administrative reconsideration organ internal staff quality is uneven, makes the authenticity and accuracy of the administrative reconsideration decision is not guaranteed (Cui Jingya, 2009). On the other hand, because the parties in the administrative reconsideration process, the rights of the statement and defend under the
program mode design is not fully exercise, so the administrative reconsideration authority unilateral review and discussion decision will inevitably because of the lack of openness and impartiality and make the parties difficult to accept and identity, so the purpose of the administrative reconsideration system design is not.

3. The idea of perfecting the procedure of administrative reconsideration system in China is proposed from the perspective of procedural justice

3.1 Implement the hearing procedure

Due to the current administrative reconsideration process in our country, only the applicant request or reconsideration agencies think necessary to hold a hearing, but the hearing is more conducive to the protection of civil rights, and because of its open and transparent degree relative to the symposium, argument meeting is higher, so more convenient for public participation. Therefore, the implementation of the hearing procedure is of great significance to the development and perfection of the administrative reconsideration procedure in China (Zhou Hanhua, 2005). I think, the implementation of the hearing procedure should be the next key problem of the administrative reconsideration system, the reconsideration organ to record the content of the hearing process as the important basis of the final reconsideration decision, for the evidence submitted by the parties should also be after the hearing as the basis, in this way, the accuracy of the administrative reconsideration procedure, impartiality and credibility can be strengthened.

3.2 Establish the institutional guarantee of the principle of party participation

The procedure of administrative reconsideration in China should also add more humanized characteristics, and the applicant should fully and effectively participate in all links of the administrative reconsideration procedure, so as to safeguard their legitimate rights and interests. In addition, the parties should also participate in the process of administrative reconsideration, reduce the threshold of the administrative reconsideration, at the same time also should be in the system level for more effective improvement, for example, to gradually establish is given priority to with hearing, written trial auxiliary principle, I think, only the parties really appear in court and discuss the dispute on both sides, the administrative reconsideration personnel after fully to listen to the parties, to make the corresponding reconsideration decision (Li Hongzhou, 2005).

Of course, from the perspective of efficiency and economy, if the circumstances of the case are simple and the facts are clear, then the written review procedure can still be applied on the basis of protecting the rights and interests of the parties.

3.3 Fill the lack of the system of prohibiting unilateral contact and avoidance

For a long time, citizens of the suspicion and dissatisfaction of the administrative reconsideration system is mostly because in their heart of officialdom in bad practices such as the phenomenon of worry and worry, and the administrative reconsideration system itself is the administrative organ of their specific administrative behavior supervision and correct, so the citizens will naturally to the process of administrative reconsideration may worry. Therefore, in order to make the people really improve the administrative reconsideration system in our country and dispel their doubts, we should further implement the avoidance system, and at the same time, prohibit unilateral contact. If there is a necessary meeting, we should inform the respondent in time and record it (Zhou Li, 2010).

4. Epilogue

China's administrative review system has its unique advantages both in terms of relief, supervision and efficiency. This advantage is relative to the administrative litigation. Therefore, the administrative review system should be the object of actively seeking help when the rights and interests of citizens, legal persons or other organizations are damaged. But in reality, the lack of procedural fairness of the administrative reconsideration system in China makes the administrative counterparts often have doubts and concerns when seeking the relief of the administrative reconsideration for administrative review is one kind of the internal supervision mechanism of administrative organs. Under the traditional management mode of asking for instructions and orders, an integrated relationship between the superior and subordinate, the reconsideration organ itself is the administrative organ at the next higher level of the respondent. It is difficult to ensure the fairness of the administrative review.

In order to solve the unreasonable factors in the administrative review procedure, I analyzed the current situation,
deficiencies and causes of the development of the administrative review system in China from the perspective of the fairness of the administrative review procedure, and further put forward a series of perfect measures for a lack of fairness in the operation of the procedure according to my personal opinions. I believe that with the continuous development and improvement of the process of the rule of law in China, China's administrative review system will inevitably be able to solve its existing problems and make up for its defects, so as to better win the trust of the people and glow its due vitality (Fang Jun, 2003; Zhou Hanhua, 2005).

References