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The Analysis on Administrative Problems of Administration by Law in the Context of the Rule by Law

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Abstract

Administration by law is the basic requirement and also the key point for the Party Central Committee to implement the political strategy of the rule by law. In the context of the rule by law, whether the administrative system is scientific and perfect, and thus it can fulfill all the governmental functions; whether the administrative personnel can adhere to a strict and civilized law enforcement, and thus they make government affairs public and all the executive law enforcements being carried out in a just way, all the points here matter a lot in the assessment of a remarkable achievement, a well-organized social economic order, and a well-ensured people's interests system in the process of administration by law.

Keywords: Rule by Law; Administration by Law; Administrative System

1 INTRODUCTION

On October 23, 2014, at the fourth plenary session of the 18th Congress of the Central Committee of the Communist Party of China, "The CPC Central Committee on promoting the comprehensive decision on several important problems of the rule by law" was deliberated and adopted. Hence, "administration by law" and "governing the country by law" are once again being emphasized to a new level based on the decision on comprehensively advancing the rule by law at the 16th , 17th and 18th Congresses of the CPC. The fourth plenary session of 18th Party Congress explicitly pointed out that the vitality and authority of law lies in its implementation. Governments at all levels must adhere to being under the leadership of the party, to work abide by the rule by law and law enforcement system, to improve the procedures of law enforcement, and to promote the comprehensive law enforcement, to establish the unity of power and responsibility, to develop a strict administrative system of law enforcement with responsibility, authority and high efficiency in accordance with speeding up the construction of the government under the rule by law which is scientific, strict in law enforcement with the functions of legal responsibility and power, honesty and efficiency, openness and fairness and law-abiding integrity. [1]

To carry out the implementation of the basic strategy of governing the country by law, to build our socialist country under the rule by law is the basic goal of the construction of democratic rule by law in our country. Hence, the administration by law is particularly critical in the process of governing the country by law, to improve the level of the rule by law in our country is also with unusual significance. This paper discusses the importance to the strategy of governing the country in accordance with the implementation of the administration by law in the context of the rule by law in our country, as well as some problems in administration by law and the relevant countermeasures. It is especially important to promote the concept of the administration of the whole society, and draw the great attention of all administrative departments in the context of the administration by law.

2 THE BASIC MEANING OF THE RULE BY LAW AND ADMINISTRATION BY LAW

The 15th Congress of CPC comprehensively summarized the reports of the system of governing the country by law: the rule by law means all the people, under the leadership of the party in accordance with the constitution and law,

are able to participate into managing state affairs, managing social affairs, managing economic and cultural undertakings through various channels and ways, and gradually realizing the institutionalization and legalization of socialist democracy and thus ensure that all work of the state is going on in accordance with the law, and make the system and law not to be changed according to the will of the leaders. [2]

Administration by law is the basic requirement of the administrative power under the rule by law. It means all governments at all levels and also their personnel are effectively carrying out all the administrative activities in the range of the power strictly endowed by law in all the social affairs concerning politics, economy, culture, education, and science and technology in the accordance with the power limits endowed by constitution and law.[3]

Governing philosophy in our country is the key to the rule by law, the rule of law is the core of administration by law. Administration by law is an important form of the rule of law, also is the top priority of the rule by law.

3 THE IMPORTANCE OF ADMINISTRATION BY LAW TO THE STRATEGY OF GOVERNING THE COUNTRY

Firstly, administration by law is to improve the government credibility, maintaining a harmony and stability in the society. It is also an effective way for the government to set up a positive image among its people. The content and practice of law enforcement by the administrative department of the government relates a lot with people's life, study, work, activities, etc. Only by this way can the government departments be truly trusted by people, can the administrative department of the government set up a really good image, more importantly is it really relates to the common people's vital interests. Only by administration by law can people trust in the government, and then to respond to the call of the government, and then actively cooperate with the administrative department for effective implementation of related policies, the identity of the master of their own to go to safeguard national interests. But actually, some damage to the lawful rights and interests of common people are often reported because the government hasn't exercised the administration according to the law, they do these without a strict law enforcement procedure justice process. Such as city inspectors' violent law enforcement are often reported in the recent major news media, violent land acquisition by government officials, demolition, etc., these uncivilized and even illegal administrative law enforcement has severely damaged the government image in the eyes of people orientation, hardly conducive to government departments at all levels to carry out the central decisions in accordance with the law.

Secondly, administration by law is an important content of the rule by law and the core driving force, the rule by law is the basic statecraft, but its content is in all aspects, it emphasizes from the range of legislation, judiciary, administration and so on, it practically emphasizes the importance of strictly abide by the law. In these aspects, legislation is the foundation, without a mature, a sound legal system, governing the country by law is an armchair strategist, hot air. Justice is the means, in the process of building the rule by law, there exists one sort or another problem, this hard to avoid. When problems occur, they need to be solved by legal means. To exercise the laws fair and just, to actively create a favorable legal environment, make any efforts to enhance the people's legal awareness and legal notion, let common people really aware of the law, actively obey the law, to use the law in a right way. Administration is the core, most of the laws and regulations in our country are formulated closely related to administrative law enforcement. It can be regarded that whether administrative law enforcement department can exercise administration by law or not would put a direct impact on the rule by law effectively. Administration by law is an important way and also the actual implementers of governing the country by law. Any wrong doing will damage the citizens' legal rights. If the administrative law enforcement can lead as an example, handle affairs according to the law, this will build a stranger awareness of the law in the whole society, everybody strictly abide by the law, trying to take the initiative to maintain a good atmosphere of governing the country by law. If the administrative law enforcement departments cannot lead as an example in administration by law, this will not only damage the vital interests of people, but also destroy the favorable atmosphere of governing the country by law in the whole society, preventing the construction progress to the democratic country of rule by law. As the body of law making, administration by law by the administrative enforcement law department is very crucial to establish the strategies of governing the nation by law and establish the nation of rule by law. In order to accomplish the

administration by law, the government needs to find problems in the construction of administration by law, and try to perfect the law system constantly, make a law system in the advance with the times, and is able to solve all the actual issues.

4 THE CONCRETE PROBLEMS OF ADMINISTRATION BY LAW IN OUR COUNTRY

Firstly, from the point of view of administrative system, the “feudal thought "of the rule of man is deeply rooted in the minds of the people, while the concept of "the rule by law" is ignored by people. The administrative system is not perfect with low efficiency, lack of energy, this makes no effectively incentive mechanism and competition due to the change of the government function not together with the administrative system. Moreover, some administrative departments are found the function of the party department and administrative department haven’t been separated according to the policy. Party department is always superior to the administrative department. And all is under the leadership of the party department, this makes some administrative departments have no real power while no department to bear the responsibilities of implementing the executive law enforcement and shoulder the corresponding consequences.

Secondly, no enough attention paid to the decision-making of administrative legitimacy in terms of its democracy, scientificalness and legality. The policy-making procedures of executive law enforcement have not brought to a scientific one. The supervision and responsibility mechanism is not perfect, the administration implementing is not workable, which resulting in policy-making errors occurring repeatedly, and at the same time they have not been effectively suppressed, this leads to great losses to politics, economy, culture and socialist development.

Thirdly, there constantly exists the phenomenon of impotence of abiding by the law, the refrain from punishing law-breakers, uncritical law enforcement, and even abuse of power, making-profit from law enforcement. The main reason is the lack of scientific and strict supervision and restraint mechanism. That is to say, "the impotence of abiding by the law is one of biggest problems in administration in China." [4]

Fourthly, the supervision of administrative power mechanism and constraint mechanism is not perfect. Even some of the existing system of supervision and restriction didn't play their role in a good way. The administrative supervision system appears multi-connections, multi-functions in its role practice. The authority supervision and administrative supervision of the National People's Congress is generally inefficient, ineffective in its supervision and weak in its function. There are quite a number of administrative authorities and leaders take the advantage of "privilege", and sometimes they function superior over the legal power. Because the working relationship and inter-personal feelings in the government, it is hard for the supervision and administrative enforcement departments to play a real role in administration, " missing monitoring ", "empty monitoring " or even "none monitoring " phenomena also exist in great quantities, this makes the executive power so flexible, and easy to be changed. This also causes the executive power in administrative legislation, administrative decisions in administrative law enforcement, administrative judicial implementation widely abused in all respects. In particular, some laws and regulations do not scientifically set up a series of rights for the administrative law enforcement departments, especially the scope of discretion of amplitude is too large, ignoring the consideration of civil rights, no consideration about which department people should turn to when the violation of the civil rights occur. And the more serious is that this easily causes the abuse of power in some small groups of administrative law enforcement personnel.

Fifthly, some law departments excessively consider their own interests, the administrative legislation and administrative normative documents formulated some policies conducive to the development of the vested interests of the department, rather than a whole standing. There is a lack of transparency and full argument by experts in policy making and implementation. There is a greatly distinct gap in income among personnel in the administrative departments due to the power goes to some departments who possess the real power of toll collection, approval grant. This seriously affects the staff's work enthusiasm in the low-income administrative law enforcement departments, this leads to Bandwagon Effect on vested interests, also gives a way to the corruption. In addition to these, activities of ineffective supervision of the executive branch, powerless prohibition, impotent implement, blocked decree, this makes corruption even worse in administrative departments and it can not be corrected in a short period.

Sixthly, the good and evil people mixed up in administrative law enforcement personnel, they are qualified quite differently, and sometimes they focus on competing for one-up, lack of the ability to deal with problems in accordance with the administrative work, this leads to misact and abuse in power in real work. So, it is the high time to enhance the quality of each personnel in administrative department.

5 THE RELATED MEASURES OF ELIMINATING PROBLEMS IN ADMINISTRATION BY LAW

5.1 To Fulfill the Government Functions

In order to fulfill the government functions, it is necessary to scientifically perfect the administrative procedures and the administrative system. Meanwhile it is also important to card and concrete its function, responsibility and power limits in order to keep a system of administration by law and strict executive, to abide by the law of "all people are created equal". It is not permitted to do anything which violates the legal rights of citizen, legal person and legal organization. In terms of the administration power of central and local government, it is necessary to strengthen the central administration power while to specify the executive power to local government.

5.2 To Perfect the Mechanism of Policy-Making by Law

Policy-making by law the means it is necessary to establish and perfect a series of legal norms in the field of policy-making, and try to specify the power limits to the local government and its departments at all levels, meanwhile to establish the internal policy-making regulations. [5] In the process of law enforcement and also in the embodiment of law enforcement competent, the mechanism of policy-making by law is critically crucial. A reform is needed from the three points in the following。

5.2.1 In order to make the whole procedure of policy-making effective, smooth and reasonable as well as all the people have the chance to express all they need, all they think and all they care. It is plausible to make all the related citizens to participate, more experts to discuss, democratic discussion by collective to be involved. In this way, the execution and acceptance of policies can be strengthened, to ensure the system of policy-making scientific, transparent, just and explicit.

5.2.2 To actively advocate the system of governmental advisory. Try to promote the legal quality and legal awareness of personnel in administrative enforcement of law executive as well as to train a group of people who are qualified in law, to ensure a full input of law concept into policy-making and administration by law and also the legality and efficiency in administration by law.

5.2.3 To scientifically establish the system of all life responsibility investigation and that of original responsibility investigation. Strictly punish those administrative departments and leaders who have committed misplay in significant policy-making and further specify and elaborate the system of responsibility.

5.3 To Deepen the Reform of the System of Administrative Law Enforcement

With the rapid development of the economy and culture as well as the enhancement of people's legal awareness, it is imperative to promote the comprehensive enforcement of all relevant departments, and it is particularly important to improve coordination mechanisms between the various departments. As far as the administrative quality concerned, the core is to improve the personnel's quality. That is to say it is so necessary to strengthen the system of assessing the qualification of administrative and management. For those untrained law enforcement personnel, however possess certificates of qualification will be transferred from their law enforcement positions. In order to better supervise and restrain the personnel to use and enforce their corresponding power within the legal limits, it is reasonable to further improve the legal supervision and restraint mechanisms.

5.4 To Adhere To Strict, Fair and Civilized Law Enforcement

In order to achieve a strict, fair and civilized law enforcement environment, it is wise to strengthen the law enforcement, to improve the enforcement procedures, to specify the operational enforcement processes. For instance,

to further specify and standardize hot issues such as administrative penalties, administrative expropriation, administrative enforcement, administrative fees, and other law enforcement actions. Put an end to simple law enforcement, arbitrary law enforcement, rough law enforcement, to prohibit brutal enforcement, violent enforcement, power enforcement. To carry out a system of responsibility of comprehensive implementation of the administrative law enforcement, to specify the responsibilities of law enforcement agencies and the relevant law enforcement leaders as well as that of staff. To strengthen the constraint and supervision of law enforcement, to crack down on the intervention of law enforcement from any agency or individual. To strictly prevent protectionism from local government or other department, to punish any corruption seriously during law enforcement.

5.5 To Strengthen the System of Restricting and Supervising Executive Power

In order to set up an operational system of restricting and supervising executive power and actively comply with the new trend of the development of society and the legal system, it is imperative to strengthen the system of inner-party supervision, the NPC supervision, auditing supervision, social supervision, judicial supervision and public opinion and so on. It is particularly important to perfect the system of auditing supervision, to increase the central policy support to ensure the auditing department to exercise a powerful, comprehensive and effective auditing and supervision over the state-owned assets, public funds, financial responsibility related to leaders and their economic problems, etc.

5.6 To Further Make the Public Affairs Open

At present, our country mainly carries out "two open --supervision" system as the mode of making government affairs open. Although it actually takes vital effect in practice, subjectivity and arbitrariness still exists in practice. In this case, we also need to continue to actively seek a proper and scientific way to make it systematical, legal and transparent. It is an urge for our country to specify all the issues that could be open to public, and their concerning time, and process, to completely reverse the affairs determined by executive personnel who possess executive power, then to determine whether the affairs open or not and those issues concerning how to be open. Actually, except those issues concerning diplomatic, military and major secrets related to national security, all issues are supposed to be open to the public timely, accurately and transparently, to powerfully ensure the people’s right to know and their benefits, and truly accept the all- round supervision from the people during the implementation of the executive power.

6 CONCLUSION

Through the above analysis of relevant theory and relationship, we get to know that the rule by law is our Party's basic strategy of running a state, administration by law is a top priority of building the rule by law. Administrative by law can be said to be the most critical support and backbone for the realization of rule by law, it is also an important guarantee of social progress, economic development and people's living index. So, we need to promote the process of building a democratic country of rule by law, and strive to build a socialist country governing by law as soon as possible.

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