

Original Paper

On the Protection of Reliance in Administrative Practice

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Abstract

In the field of administrative law, protection of reliance has always been a hot topic of controversy, and its development also reflects the development and change of administrative law to a certain extent. It plays an important role in various administrative behaviors such as administrative litigation, administrative penalty, administrative compensation, as well as on land and at sea. The number of cases in which our courts have utilized reliance protection for interpretation and sentencing in actual trials has also been increasing. However, the principle is to grasp the overall level, the actual use of the principle will still be different according to different cases, and there is a difference in the order of priority. How to correctly identify the protection of reliance in different administrative cases, and the use of it has become the key. Therefore, the case of administrative agreement is taken to analyze and explore the protection of reliance in law enforcement.

Keywords

Reliance Protection, Administrative Agreement, Reliance Standard, Case Analysis

1. Case Analysis

1.1 Brief Description of the Case

In September 2015, the Tiefeng District Government expropriated part of the houses in Sijiazhi Village, Tiefeng District, Qiqihar City, due to a shantytown renovation project. Li Chunhua had a 47.92 square meter residential house within the scope of the expropriation, which was built on December 26, 2006, and had a construction project planning permit, construction project completion planning acceptance certificate and land use right certificate approved by the Tiefeng District Planning Department of the Qiqihar Municipal Planning Bureau. At the time of expropriation, the Tiefeng District Shed Reform Project Department investigated Li Chunhua's housing condition and reviewed the above materials. On September 6, 2015, the Tiefeng District Shed Reform Project Department signed the Agreement on Monetary Compensation for Expropriation of Residential Houses with Li Chunhua, who chose to receive monetary compensation, and the two parties agreed that the housing appraisal value would be

RMB2,807 per square meter, and that the total amount of monetary compensation would be RMB156,700 yuan. Li Chunhua signed the agreement and then moved, and the Tiefeng District Shanty Reform Project Department issued a house requisition acceptance form for Li Chunhua's husband, Zhang Guowen, on the 19th of the same month. Now the house has been demolished, the lot of the requisitioned households have moved back to live. The Tiefeng District Government reviewed Li Chunhua's expropriation compensation agreement according to the "one assessment and two reviews" procedure, and found that the area of the land certificate provided by Li Chunhua's application for planning approval did not correspond to the area of the house, and considered that the household registration information provided by Li Chunhua in the application for planning approval and the suspected forgeries of the land certificate needed to be further verified, and therefore did not issue the expropriation compensation for the house.

The court of first instance held that Li Chunhua's request for the Tiefeng District Government to pay compensation for house expropriation in accordance with the expropriation agreement should be supported. The court ruled that Tiefeng District Government should pay Li Chunhua 156,700 RMB within 30 days from the effective date of this judgment.

1.2 Focus of Dispute

Three focuses of the issue can be found by reading and thinking. First, in most of the cases searched, the use of reliance protection for review of most of the administrative licensing, administrative payment and other administrative acts, so the administrative agreement can be applied to the protection of reliance, the application of the elements of what? Second, the use of reliance protection, such as the administrative counter-party used deception, then what is the impact on the administrative agreement, whether to prevent the application of reliance protection? Third, the principle of protection of reliance on how to assess the justification of the standard, and administrative law and other principles of the connection and conflict, and on this basis to achieve a relative balance of interests and protection?

1.3 Discussion of Opinions

The above case reflects the relevant revocation situation of administrative agreement in administrative expropriation and the principle of protection of reliance in administrative expropriation. At first, the Tiefeng District Government as a qualified plaintiff put forward the defense because Li Chunhua had committed deceptive acts, so the compensation was not levied. However, the details of the case is relatively clear, the government and Li Chunhua signed the agreement belongs to the administrative agreement, and before signing the relevant administrators have been in accordance with the provisions of the assessment, and finally determine the compensation rules and area, belong to the lawful and in accordance with the provisions of the act, the commitment made is also legal and effective. The responsibility after the official assessment was taken by the administrative subject, and Li Chunhua had fulfilled his obligations according to the requirements of the agreement without negligence, so the Tiefeng District Government should make administrative compensation.

The administrative agreement exists to release and change the situation, but shall not be mixed with the superiority of the administrative power. The law gives the administrative subject can cancel the power to change, the original intention is for the greater public interest, can't be no reason to their own fault to derogate from the interests of the administrative relative. Administrative relative without fault, and obtain the corresponding individual rights when legal, should confirm the corresponding effect of the administrative relative. The administrative subject can not prove that the administrative relative's behavior is illegal to cause the agreement is invalid, so the administrative subject can not be related to policy changes, etc., abuse of their own administrative power, should be based on the interest of reliance, to maintain the interests of the administrative relative due.

Whether the case violates the rule of legitimacy, some viewpoints believe that as long as the administrative relative exists deceptive behavior violates the legitimacy. To scrutinize this case with legitimacy, its focus should take into account both sides, not just one side. Considering the time to judge the legitimacy, it should be judged at the time of evaluation and signing the agreement. And at that time the administrative body sent by the temporary agency also carried out the corresponding certification, so can not be in the relative fulfillment, and then claim that there is a legitimacy flaw, the subsequent assessment will also have an impact, and will cause excessive losses to the administrative relative.

2. Relevant Administrative Law Theories

2.1 Meaning and Origin of Reliance Protection

What is the trust interest, administrative law and civil law on the understanding of the trust interest is broadly similar, or even convergence, can be understood as the protection of trustworthy expectations of benefits. That is, between the two parties, based on a certain relationship, so that the two trust each other, and based on this trust so that the other party believes that it can obtain the corresponding benefits.

The principle of protection of trust in administrative law appeared in Germany before and after the First World War, all levels of administrative courts in dealing with related administrative cases such as the revocation of administrative acts, disposition is to apply this principle (Zhou, W. F., 2003, pp. 75-78). After the second world war, the argument of the point of view, but has never been out of sight, the principle of protection of reliance on the contrary, in administrative cases are used more frequently. Our country is in reference to the civil law system on the basis of absorbing the relevant legal elements, the protection of reliance into the administrative law in our country. On the meaning of administrative law protection of reliance, different scholars have different ways of expression and elaboration of the reason, summarize and discernment, can be concluded is the administrative organ to make the administrative act has the legitimate interest of reliance, the administrative organ can't arbitrarily change or revoke the administrative act has been made, if revoked, must compensate for the relative due to the trust of the loss arising from the loss. From another point of view, can also be summarized as

the administrative subject according to the relevant events related to the commitment to contribute to the corresponding legal status, and the administrative relative according to this legal status, based on the corresponding trust dispose of their own corresponding state or right. According to the administrative relative's state of the relevant legitimate interests, should be protected by law, the administrative subject should be based on the previous state of law to realize the relevant commitment.

2.2 The Basis and Importance of Reliance Protection

The central theory of administrative law has been the hot issue of discussion, the more popular for the control theory, management theory. However, due to China's influence by the western legal thinking, most scholars at this stage advocate the control theory, that is, the use of relevant laws to regulate and control the power of the administrative subject, to protect the rights of administrative relative subject. Control that need to have the corresponding binding force, the administrative subject in reality is usually a relatively strong party, so the relevant concepts and principles to be bound will further control. The same our country's political environment is also very suitable for the emergence and development of the protection of trust, the application of the principle of protection of trust to be established on the basis of the modern rule of law, our country's legal construction is perfect, and with the development of economic development can be better for the development of the rule of law. Good rule of law environment can maximize to ensure the stability of the law, can be made in the administrative body of administrative behavior can play a small range of autonomy, so that the protection of reliance will not be ultra vires. Reliance on the protection of the constitution can also find its support, the constitution protects human rights and the rights of citizens, in the administrative system, mostly public power, and the administrative relative is in a relatively weak position. Reliance on the principle of protection is an extension of human rights protection and civil rights, in the spirit of the principle of the level, to the administrative relative to a way of relief.

Reliance interest protection has its important significance. Reliance protection can keep the law stable to a certain extent, and administrative acts can be interpreted with reliance protection to a certain extent, which maintains the stability of the administrative law structure. Reliance protection in administrative law ensures that individuals and organizations have reasonable expectations of the actions of administrative organs and act on them, ensuring that these promises and rights are protected and preventing administrative organs from arbitrarily changing promises or depriving rights. It pays more attention to the behavior of the administrative subject while taking into account the administrative relative. It prevents improper or discriminatory actions by administrative organs, ensures that citizens and organizations are treated equally in administrative procedures, and also maintains social security stability to a certain extent. Trust protection can stabilize government integrity, which is an important part of social credit and the backbone of social credit, and is the credit certificate of a social class or region. The government should play an exemplary role in the construction of social credit. The credibility of the administrative body not only maintains the credibility of society, but also affects the business environment and has an impact on the investment confidence of the relevant enterprises, thus

affecting the relevant economic development to a certain extent.

2.3 The Scope of Application of the Protection of Reliance and the Application of the Elements

The scope of application of the protection of reliance has been the focus of debate, some scholars believe that the administrative license can be applied, some scholars believe that the administrative payment, and some advocate that as long as the administrative act of granting benefits can be applied. Some scholars believe that as long as the administrative act can be applied (Chen, T. T., 2015, pp. 5-8). The author is more inclined to administrative behavior can be applied to the protection of reliance, because the protection of reliance is not only to protect the administrative relative's single right, but also can bind the administrative subject. In playing a certain binding effect at the same time, but also in disguise to protect the credibility of the administrative body, the implementation of administrative behavior has a certain role in promoting. At the same time, the field of application of reliance interests is not static, from the first only applies to the act of granting benefits to the present countries are applicable to the expansion of the expansion of its residence in the better, so to give a relatively broad scope of application, can avoid the application of too restrictive and cumbersome. In the protection of trust and administrative behavior of the relevant principles have certain compatibility, such as the protection of trust and administrative penalty liability has compatibility, the court can use the protection of trust to judge the subjective fault of the perpetrator (Li, X. P., 2023, pp. 1-11). In the judicial practice point of view for analysis, from the existing referee instrument, can retrieve the corresponding administrative license, administrative agreement, administrative grant and other typical cases, there are also some administrative agreement, administrative penalties and other new type of reliance on the protection of the case. This shows that China's judicial practice is also expanding the scope of application of the protection of reliance, in line with the pace of social development, the implementation of a relatively wide range of application.

Reliance protection of the applicable elements, the current stage of mainstream trust is still three elements system, the first point, to produce the corresponding basis of trust, that is, the administrative body is the implementation of the administrative act of granting benefits, the administrative relative based on the administrative act of generating trust dependence. The second point, there is a trust benefit, the administrative relative based on the trust to implement the corresponding behavior, and based on this behavior produces assessable benefits or burdened with the corresponding risk. The third point, there is a legitimate reliance interest, trust occurs out of good faith, and no negligence. At the same time, with the continuous development of society, the need for trial practice, the four elements are also slowly stepping into the public's view, that is, the deviation of administrative behavior is included in the constituent elements, to promote the application of judicial practice (Lu, Z. F. & Zhang, D., 2023, pp. 41-48, p. 95). But whether it is three elements system or four elements system, there are corresponding protection of reliance, also applies to the above case. As for the way of trust protection, that is, the use of can not revoke not repeal, if in order to safeguard the interests of the majority of the community and so on, have no choice but to revoke, should be carried out in accordance with the

procedures and authority of the law, and the administrative counterparts of the losses incurred as a result of the compensation or indemnification.

2.4 Relationship between Reliance Protection and Other Principles

2.4.1 Reliance on Protection and Principle of Good Faith

Principle of good faith, emphasizing that the parties should be honest and trustworthy in legal behavior, to avoid damage to others due to dishonest behavior. Combined with the concept and moral requirements for administrative subjects, not only contains honesty, trust, and civil law good faith. From the deep level for the construction of honesty and credit both to regulate the administrative subject and administrative relative (Yu, L. Y., 2022, pp. 125-147). It should be built on the basis of the rule of law, derived from the relatively stable legal basis. Analyzed from the constitutional point of view, trust protection is the constitution protects the basic rights of people on the basis of the extension. Therefore, principle of good faith has the internal consistency.

2.4.2 Reliance Protection and Rebus Sic Stantibus

Rebus sic stantibus usually refers to the contract is established, the occurrence of the contract can not be foreseen at the time of the establishment of the situation, the parties can negotiate, consultation fails to change or terminate the contract. Rebus sic stantibus is one of the principles of civil law, which is based on the protection of reliance. And the implementation of administrative behavior at the same time may also become a change of circumstances, but in general, the administrative agreement in the process of fulfillment, such as the administrative subject to the occurrence of a change of circumstances to change or terminate the administrative agreement, unless for the sake of the major public interests, the general court will not support, in order to protect the administrative relative's reliance on the interests of the maintenance of its legitimate interests. Therefore, to a certain extent, the situation is also the protection of reliance on both the risk and the continuation.

2.4.3 Reliance Protection and Other Principles

The principle of protection of trust and the principle of administration in accordance with the law are important principles of administrative law, aiming to ensure that the behavior of the administrative organs of the lawful, fair and predictable. The principle of protection of reliance emphasizes that the reasonable expectations and reliance of individuals and organizations on the basis of lawfulness should be protected, while the principle of administration in accordance with law emphasizes that the acts of administrative organs should be based on the authorization and provisions of the law. At the same time, it can also give confirmation to the protection of reliance (Wang, G. S., 2015, pp. 167-175). Although the principle of protection of reliance and the principle of administration according to law are usually consistent, they may be in conflict in some cases. For example, a conflict may arise between the principle of protection of reliance and the principle of administration in accordance with law when an administrative organ grants a right or benefit to an individual or organization for a certain period of time, and if subsequent changes or amendments to the law result in the deprivation of this right or benefit. In order to reconcile this conflict, the executive is called upon to balance the need to uphold

existing laws against the need to respect the legitimate expectations of individuals and organizations. Reliance protection and procedural due process, the principle of procedural due process can guarantee the protection of reliance interests. Procedural due process requires administrative organs to follow certain procedures when making administrative acts, to achieve administrative openness, public participation, and the principle of recusal. This procedure can give administrative behavior a relatively legitimate standard, can bring the administrative subject and administrative relative to the most basic foundation of trust. Procedural due process also gives the trust protection three elements of the justification provides the principle of support. Reliance protection also reinforces due process, which requires administrative organs to take into account the reasonable expectations of individuals and organizations when making administrative decisions, and to ensure that their reliance is respected and protected. Within the framework of procedural due process, administrative authorities should make clear commitments to the legitimate expectations of individuals and organizations and follow those commitments. Doing so not only enhances procedural due process, but also increases the public's trust in the administration and the reasonableness of its decisions. Trust protection and due process can check and balance each other and permeate each other. In specific cases, administrative agencies need to balance the relationship between reasonable expectations, public interest, and procedural requirements, and in most ideal situations, can even do both. But in individual cases, such as when the legitimacy of the procedure is undermined, we must increase the protection of the interests of the trust, not only because of the destruction of the procedure on the corresponding punitive measures, while ignoring the reasonable protection of the administrative relative. Such as the loss of the principle of protection of reliance, should be due process as the access point, increase penalties, to achieve the corresponding administrative time limit.

3. The Effectiveness of the Administrative Agreement and the Protection of Reliance

The effectiveness of the administrative agreement is the premise of dispute resolution, most of the scholars as well as the “judicial interpretation of the administrative agreement” have shown the effectiveness of the validity of the agreement, invalid, pending, revocable and other effectiveness of the state. However, according to the practice and the protection of interests and other practical problems, if a minor violation of law will lead to the agreement is invalid, will lead to the collapse of the trust between the parties to the agreement, is not conducive to the establishment and fulfillment of the agreement, will also cause a certain sense of uneasiness, the trust will no longer exist. Therefore, in order to maintain judicial stability, from the current norms, can also be deduced, such as administrative agreement can not be confirmed invalid, according to the principle of favorable, even if there is a violation of the law, should maintain the effectiveness of the administrative agreement (Wu, R. R., 2022, pp. 29-38). Administrative agreement and trust protection, more inseparable. Administrative agreement as a symbol of the administrative subject and the symbol of the relative consistency, compared with other administrative acts, the administrative agreement more emphasis on respecting the

effectiveness of the agreement features, under the understanding of this condition, such as the existence of defects in practice does not have the significance of the legal evaluation of the agreement is usually recognized as legal to maintain the effectiveness of the agreement. And in such cases, in order to make the administrative relative's rights and interests are fully protected, usually invoke the protection of trust (Xu, Z. M., 2023, pp. 29-45). Reliance on the protection of the invisible regulation of administrative agreements, not only is the basic principle of administrative agreement fulfillment, but also the loss of compensation and reparation of the legal basis.

4. The Status Quo Analysis

The current scope of application of the protection of reliance in the field of legislation in China is too narrow and lacks clear provisions, resulting in the protection of reliance in judicial practice is more limited. First of all, we need to analyze the legislative background of reliance protection. Reliance protection, as a legal principle, aims to protect the reasonable trust of the parties based on the behaviour or commitment of the administrative organ, and to avoid the parties suffering undue losses due to the administrative organ's improper behavior or change of policy. However, the provisions of the existing legal system on the protection of reliance is relatively vague, failed to form a clear scope of application and specific standards, which makes the application of the protection of reliance in the field of administrative law has become more difficult and limited.

4.1 The Scope of Application of Reliance Protection is Too Narrow

China's current legal system, the scope of application of the protection of reliance is mainly concentrated in the field of administrative payment and administrative licensing. In these areas, the administrative relative usually can rely on the administrative organ's promise or behavior, produce trust benefit. However, the application of reliance protection in other fields of administrative behavior is relatively rare. For example, in the fields of administrative penalties, administrative levies, and administrative coercion, it is usually difficult for the administrative relative to obtain legal remedies through reliance protection. This narrow scope of application, resulting in the protection of reliance in a wider range of administrative action fails to play a due role, but also fails to fully reflect the stability and fairness of administrative action.

4.2 Less Application in Judicial Practice

Although the court took the initiative to apply the principle of protection of reliance in some cases, but this situation is still relatively few. In most administrative litigation cases, the administrative relative is more inclined to invoke other legal principles for litigation rather than take the initiative to claim reliance protection. This is closely related to the courts' cautious attitude towards the application of reliance protection and the lack of clarity in the application criteria. In judicial precedents, although there are cases in which individual courts have taken the initiative to apply the principle of reliance protection due to the specificity of the case, such cases are not common in the overall judicial practice. Courts are usually conservative in dealing with cases involving reliance protection and do not easily

hand down supplementary or expansive judgements, resulting in the judicial effectiveness of reliance protection not being brought into full play.

4.3 Uncertainty of the Applicable Criteria for Reliance Protection

The uncertainty of the application standard of reliance protection is also an important reason why it is difficult to be widely used in the judicial field. Reliance protection should be based on the behavior or commitment of the administrative organ, but in practice, how to define whether the administrative act constitutes lawful reliance, the scope of protection of reliance interests in the end what should be included, these issues have not yet formed a unified standard. For example, in the field of administrative agreement, although the application of reliance protection is reflected, but due to the lack of clear legal provisions, the court in judging the specific application of reliance protection often exists in different interpretation space, which makes the application of the standard of reliance protection has uncertainty.

4.4 The Administrative Agreement in the Protection of Reliance

In the judicial application of administrative agreement, the protection of reliance also faces the problem of balance between public interest and reliance interests. Administrative agreement involves the interests of the administrative relative is often not only the private interests, but also includes the public interest. How to accurately measure the relationship between public interests and reliance interests in administrative agreements has become a difficult issue. The problem of determining the basis of reliance protection also stands out, as different courts may adopt different standards in determining the basis of reliance, resulting in inconsistent judgement results. In addition, the lack of clarity on the scope of compensation for reliance interests is also one of the important factors limiting the application of reliance protection in the field of administrative agreements. Due to the lack of specific compensation standards, it is often difficult for the court to quantify the loss of reliance interests when making judgements, thus leading to a significant reduction in the actual effect of reliance protection.

4.5 Insufficient Perfection of Laws and Release of Administrative Effectiveness of Reliance Protection

Due to the imperfection of the legislation on reliance protection and the insufficient application in judicial practice, the administrative efficacy has not been fully released. When administrative organs formulate and implement policies, they may lack sufficient stability and transparency, resulting in the administrative relative not being able to make reasonable expectations based on clear rules, thus affecting the overall rule of law environment and administrative efficiency of the society. Reliance protection, as an important means of safeguarding administrative stability and legal expectations, should be applied to a wider range of administrative behaviors, so as to enhance the predictability and fairness of administrative behavior and improve administrative effectiveness.

5. Countermeasures and Improvement

In view of the above problems, the corresponding legislative system should be improved, the quality of administrative legislation should be improved, the scope of application should be clarified, or corresponding explanations should be issued to meet the needs of administrative law enforcement and judicial diversity. Unify the standard for determining the basis of reliance, clarify the legitimate and reasonable administrative eligible subjects, and when applying the protection of reliance, clarify the hierarchy and value level with other principles, so as to achieve non-conflict and non-interference, and apply the relevant principles accurately and quickly. In terms of judgment, the reliance expectation of the administrative relative shall be fully considered, and the possibility of foreseeing the reliance benefit shall be comprehensively considered. As for the measurement of public interest and reliance interest, various factors should be considered comprehensively, such as the price standard at the time, and the minimum protection amount should be set to set up the minimum initiation procedure. For different areas of application, apply different minimum compensation standards, and set up strict procedures. Similarly, as most disputes occur when the duty of care is not clear, the duty of care should be clearly indicated. It should be made clear that administrative agreements, etc., are presumed to be valid when they cannot be proved to be invalid, so as to avoid damages caused by excessive abuse of power. Clarify the compensation standards for direct and indirect losses, and realize the flexible transformation of compensation and indemnity. Lastly, regular evaluation of administrative subjects in accordance with the law shall be carried out to ensure the normal exercise of their powers and authority, in keeping with the rule of law government.

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