

## *Original Paper*

# Analysis of the Review Criteria for Obviously Improper Administrative Acts

Zhenyang Ren<sup>1</sup>

<sup>1</sup> School of Marine Law and Humanities, Dalian Ocean University, Dalian, China

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### **Abstract**

*Due to the expansion of the power of administrative organs, their discretionary power has also increased. This phenomenon has led to frequent abuse of power by administrative organs and unfair handling of cases, and the frequency of such situations is still rising, showing a trend of getting worse and worse. This not only seriously infringes on the legitimate rights and interests of the administrative counterparts, but also greatly undermines the credibility of administrative organs, bringing extremely adverse effects to the entire administrative management system. "Manifestly improper" as a means in judicial review, its core goal is to ensure that the administrative acts of administrative organs are both reasonable and legal. The current Administrative Litigation Law together with its judicial interpretations have not provided a clear definition of what constitutes an "manifestly improper" administrative act. This article aims to establish a set of scientific and reasonable judicial review standards to accurately identify and effectively regulate.*

### **Keywords**

*Manifestly Improper, Judicial Review Standard, Administrative Discretion*

### **1. Introduction**

In modern rule-of-law society, the power of administrative organs is constantly expanding, and discretionary power is also increasing accordingly. However, this expansion of power has brought about problems such as abuse of power by administrative organs and unfair handling of cases, which seriously infringes on the legitimate rights and interests of administrative counterparts and undermines the credibility of administrative organs. To address this issue, "manifestly improper" has been introduced as an important means of judicial review, with its core goal being to ensure the rationality and legality of administrative acts. However, the current Administrative Litigation Law and its judicial interpretations still have an unclear definition of 'manifestly improper' administrative acts, leading to

many controversies and uncertainties in judicial practice. This affects the quality and efficiency of judicial review and also brings difficulties to the protection of the rights and interests of administrative counterparts. Therefore, this article focuses on the review standards for “manifestly improper” administrative acts, aiming to accurately define its concept and improve the judicial review standards. Starting from the concept and legal basis of “manifestly improper” administrative acts, it analyzes its review standards, existing problems, and proposes improvement paths. By establishing a scientific and reasonable review standard, the article expects to effectively curb unreasonable administrative acts, ensure that administrative organs exercise their discretionary power fairly, provide clear guidance for judicial organs, improve the quality of judicial review, protect the rights and interests of administrative counterparts, and promote the construction of a rule-of-law society.

## **2. The Concept and Legal Basis of Manifestly Unlawful Administrative Acts**

An obviously improper administrative act refers to an administrative act by an administrative organ that clearly exceeds the statutory authority, has unclear factual determination, violates the principle of proportionality, and violates the due process. Professor Jiang Ming'an defines “obviously improper” administrative acts as administrative acts made by administrative organs that are obviously unreasonable and unjust, which can be identified by any person with general legal awareness and moral standards. Zhou Youyong believes that the main characteristics of “obviously improper” administrative acts are that although the administrative acts implemented by administrative organs and their staff do not violate the prohibitive provisions of laws, they are obviously unreasonable or do not meet the requirements of justice. Cao Sheng holds that the criteria for determining “obviously improper” should be determined with reference to “abuse of power” and “manifest injustice”. It is not only necessary to conform to the textual provisions of laws but also to conform to the principles and spirit of laws. It should not only have no obvious illegality but also no hidden illegality (Shi, B., & Cao, S., 2016, pp. 24-28).

In China's legal system, the legal basis for the concept of “manifestly improper” mainly comes from the following provisions of the Administrative Litigation Law and the Administrative Reconsideration Law: Article 70(6) of the Administrative Litigation Law stipulates that when people's courts review administrative acts, if they find that such an act is manifestly improper, they have the authority to declare the administrative act invalid or partially invalid, and may require the administrative organ to make a new decision. Article 28(1)(3) of the Administrative Reconsideration Law explicitly states that during the reconsideration process, if the administrative reconsideration organ determines that a specific administrative act is “manifestly improper”, it has the authority to revoke, amend, or declare such an act invalid.

### **3. Review Standards for Manifestly Improper Administrative Acts**

#### *3.1 Principle of Proportionality*

The principle of proportionality holds an important position in the constitutions and laws of many countries. In China, although the legal provisions do not directly mention the principle of proportionality, this principle is reflected in the Administrative Litigation Law and related judicial interpretations. It requires courts, when reviewing administrative acts, to assess whether such acts comply with the principle of proportionality. Generally speaking, the basis for courts to determine a violation of the principle of proportionality is usually that the handling result does not conform to the principle of proportionality between offense and penalty, causing excessive damage or adverse effects, the penalty amount and degree being disproportionately heavy, and no choice of the most favorable way for the party (Liu, Q., 2019, pp. 100-101).

#### *3.2 Principle of Due Process*

As the cornerstone of a rule-of-law society, the principle of due process originated from the natural justice principle in the United Kingdom. With the continuous deepening of China's rule-of-law construction, the principle of due process has been adopted by an increasing number of laws and is reflected in practice. This principle requires administrative organs to disclose relevant information when making decisions, including the basis, process, and results of the decision. The improvement of transparency not only helps to enhance the public's trust in administrative actions but also effectively prevents corruption and improper conduct. Therefore, the design of administrative procedures should pursue efficiency while also considering convenience for the people.

### **4. Problems with the Review Criteria**

#### *4.1 Scope of Application Is Not Clear*

Within the framework of legal regulation, using the standard of manifestly inappropriate as a criterion for evaluating administrative actions is a moderate way to restrict the power of administrative agencies. This approach is more lenient and tolerant than other stricter and more adversarial standards, which can reduce direct conflicts with the administrative department and promote a more friendly relationship between the administrative and judicial departments. It encourages more dialogue and cooperation, which is beneficial for resolving administrative disputes. Judges adopt the standard of manifestly inappropriate to review and modify administrative decisions when resolving disputes in order to respect the authority of the administrative department. Compared with standards focusing on insufficient evidence, incorrect application of law, or procedural errors, this term is more diplomatic, less confrontational, and more acceptable to administrative entities. Judges tend to adopt this standard (Yu, L. Y., 2022, pp. 153-154).

#### *4.2 Criteria for Judgment Are Not Unified*

So far, the academic and practical circles have not reached a consensus on the definition of obviously improper standards. In judicial practice, when judges assess whether an administrative act constitutes obvious impropriety, they usually take into account various factors comprehensively. These factors include, but are not limited to, the accuracy of factual determination, the correctness of legal application, the compliance of procedures, and the rationality of administrative discretion. For example, in terms of factual determination, judges will check whether the administrative organ made a decision based on sufficient and reliable evidence, and whether such evidence is sufficient to support its conclusion. If the administrative organ ignores key evidence or misinterprets the evidence, this may be considered as obvious impropriety. In terms of legal application, judges will evaluate whether the administrative organ correctly understands and applies the relevant legal provisions. If the administrative organ's legal interpretation is contrary to the legislative spirit or judicial interpretation, or if its way of applying the law leads to an unreasonable result, this may also be deemed as obvious impropriety (Huang, X. J., 2023, pp. 101-102).

### **5. Improvement Path of Review Standards**

#### *5.1 Define the Scope of Application*

The most important thing in defining the scope of application is to distinguish between clearly improper and mainly insufficient evidence. Define the boundary between manifestly inappropriate and insufficient principal evidence. This can be distinguished based on several key points. First, the sufficiency of evidence is an important consideration. Insufficient principal evidence refers to the situation where the evidence relied upon by the administrative organ when making an administrative decision is insufficient to effectively support the facts on which the decision is based. If the factual determination is vague or erroneous due to the lack of key evidence, this constitutes insufficient principal evidence. The core of this standard lies in ensuring the accuracy of factual determination, requiring that the collection, preservation, and adoption of evidence must strictly follow the explicit legal provisions to maintain its integrity and legality. In contrast, manifestly inappropriate not only involves issues of evidence sufficiency but also extends to broader rationality issues such as whether the administrative organ maintains impartiality when performing its duties, whether it has fully considered all relevant factors, and whether the means taken are in line with the principle of proportionality. Even if the evidence is sufficient, if the administrative act has obvious irrationality or unfairness in other aspects, it may still be deemed manifestly inappropriate.

Secondly, legal basis and judgment criteria are also key to distinguishing between the two. When the law's provisions on legislative intent are not clear, the requirement of insufficient principal evidence necessitates that administrative organs conduct a comprehensive assessment based on the original intention, background, overall spirit of the law, and the connection between its articles. If there is a mistake in this assessment process leading to an error in factual determination, such an error should be

classified as insufficient principal evidence. On the other hand, manifest impropriety involves discretion regarding legal requirements, including whether it violates the principle of proportionality, the principle of equality, and administrative discretion benchmarks, etc. If the administrative organ's discretionary act violates these principles, even if the factual determination itself is correct, it may still be deemed manifestly improper. Through these distinctions, the boundaries between manifest impropriety and insufficient principal evidence can be more clearly understood, thereby enabling more accurate application of relevant standards in judicial practice. Such clear distinction helps improve the accuracy of judicial review and ensures the legality and rationality of administrative acts (He, H. B., 2016, pp. 76-77).

### *5.2 Use Basic Principles as a Unified Standard for Judgment*

When establishing the review standard for whether an administrative act constitutes “manifestly improper”, the article argues that a series of basic principles should be used as the core basis, which is consistent with the mainstream view in academia. Applying these basic principles to the review process requires the following steps: First, we must clarify the basic principles, namely the principle of lawful administration and the principle of reasonable administration, which form the cornerstone of the review. The principle of lawful administration requires that administrative acts must be based on explicit authorization by law and strictly comply with legal requirements. The principle of reasonable administration, on the other hand, requires that administrative acts within the scope of discretionary power should be reasonable and fair. The principle of reasonable administration can be further subdivided into the proportionality principle, the equality principle, and the principle of due process, which provide clear operational standards for judging whether an administrative act is “manifestly improper”. Second, there is the issue of applying these principles. The proportionality principle is used to evaluate the rationality between administrative means and purposes, involving three levels: the legitimacy of the purpose, the appropriateness of the means, and the principle of minimizing harm. Courts need to assess whether the measures taken by the administrative organ are consistent with the legal purpose and legislative spirit, whether they are necessary to achieve the goal, and whether the path with the least damage to the parties' rights and interests has been selected. At the same time, the application of the fairness principle ensures the fairness and impartiality of administrative acts, requiring courts to check whether the administrative organ has excluded irrelevant factors and maintained consistent treatment standards in similar or identical situations. Finally, by combining the proportionality principle and the fairness principle, a comprehensive review of the reasonableness of administrative acts is conducted. This division of labor and cooperation in the evaluation system not only enhances the targeting and operability of the evaluation standards but also improves the accuracy and fairness of the evaluation process, thereby ensuring that the legality and reasonableness of administrative acts are effectively reviewed and safeguarded (Liu, B. J., 2023, pp. 85-86).

## 6. Discussion

Since the revision of the Administrative Litigation Law, the expansion of administrative organ powers has become an inevitable trend. Faced with this change, administrative organs must strictly control the scale when exercising administrative powers and prudently exercise their discretionary powers. At the same time, judicial organs, when applying the legal standard of “manifestly improper” in the adjudication process, must conduct sufficient argumentation and reasonable interpretation to ensure that the legitimate rights and interests of the administrative counterparts are properly protected. Such cautious attitude and rigorous application of law are crucial for maintaining the fairness and authority of the law.

## References

- He, H. B. (2016). On the Obvious Impropriety of Administrative Acts. *Law Studies*, 38(03), 76-77.
- Huang, X. J. (2023). Administrative Acts Clearly Improper in Administrative Litigation: Legality Review or Rationality Review and How to Conduct the Review. *Journal of Suzhou University (Philosophy and Social Sciences Edition)*, 44(02), 101-102.
- Liu, B. J. (2023). Judicial Review of Administrative Discretionary Acts by Public Security Authorities. *Learning and Exploration*, 2023(01), 85-86.
- Liu, Q. (2019). Application of the Proportionality Principle in Administrative Judgments. *China Legal Science*, 2019(03), 100-101.
- Shi, B., & Cao, S. (2016). Review and Judgment of “Obvious Impropriety” of Administrative Acts in the New Administrative Litigation Law. *Legal Application*, 2016(08), 24-28.
- Yu, L. Y. (2022). On the Review of Rationality in Administrative Litigation. *Comparative Law Studies*, 2022(01), 153-154.