

China's administrative appeal law and some implications for Vietnam

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Abstract: *Administrative dispute between government and citizen is an unavoidable issue in public administration. Although frameworks for administrative dispute settlement have been studied and improved for a long time, administrative appeal law still remains some defects relating to the independence of administrative dispute-settlement agency, the lack of professional skills of government officer, narrow scope of administrative appeal,... In order to fix those issues, a large number of researches proposed suggestions on administrative appeal reform and organizational structure reform with lessons from some developed countries. By studying Chinese administrative appeal law, the author shows the advance points of China administrative appeal law such as the scope of administrative dispute, the appeal settlement agencies, administrative appeal procedure, which can be applied in Vietnam to improve Vietnam administrative appeal law.*

Keywords: Administrative appeal, Administrative dispute, Public administration, Vietnam, China.

1. The main contents of Chinese law on administrative appeal

In any state, the administrative dispute is considered as an unavoidable phenomenon in public administration. This is a kind of social dispute between administrative agencies and

their managed entities about either administrative decisions made by administrative authorities or administrative actions taken by administrative authorities. When administrative dispute occurs, it is legally settled in two different frameworks. In the first framework, administrative

dispute is solved by public agency using administrative appeal method (this framework refers to dispute-settlement mechanism of judicial administration). In the second framework, administrative dispute is settled by administrative court (this way is called dispute-settlement mechanism of administrative judication). In China, besides dispute-settlement mechanism of administrative judication, dispute-settlement mechanism of judicial administration is getting more and more attention and being improved.

By the current time, the Administrative Appeal Act 1999 (AAAs), Regulation on AAA Execution 2007, as well as other legal documents issued before such as Regulation on Administrative Appeal at Citizen Reception issued by The Standing Committee of the National Assembly of China are three main parts of China's administrative appeal law in dealing with administrative dispute in China. This system has three main points.

The first key point is about the scope of administrative dispute that can be solved. As stated in Article 6 of the Administrative Appeal Act 1999, the scope of administrative dispute refers to the right of managed entities to initiate administrative lawsuits explained in the Act: "Citizen, legal entity or organization, who claims that a specific administrative decision has violated their legitimate rights and interests, has the right to appeal to

administrative agency". Administrative agency must reconsider its decision and redress the consequence of that administrative decision. Article 6 of the Administrative Appeal Act 1999 stipulates 10 cases in which citizen may appeal, including: (1) administrative penalties; (2) administrative enforcement; (3) license management; (4) verification of rights; (5) violations against the right of doing business; (6) agricultural contract; (7) request of taking an illegal obligation; (8) administrative license; (9) non-taken legal obligation; (10) relation to administrative subsidy. As well as administrative decision, the Administrative Appeal Act expands its scope to administrative action (Yang Xiao Jun, 2011: 29-30). According to Point 11 of the AAA, if a specific action of an administrative agency is supposed to violate the legitimate rights and interests then citizens have the right to appeal about that action. Many Chinese scholars believe that all of administrative actions violating the legitimate rights and interests of the individual are entitled to be administrative appeal lawsuits. In other words, Chinese government allows citizens protecting the political right and other rights such as the right to freedom of speech, publishing, association, labor, the right to education (Guo Feng Hao, 2010: 11).

Moreover, the advance of China's appeal law is that by-law documents could be reviewed if they play as legal

platforms in making wrong administrative decision. The later version of Administrative Appeal Act allowed reviewing only administrative decision and administrative action; whereas, Article 7 of the Administrative Appeal Act 1999 stipulates that when citizens complains about an administrative decision or an administrative action, they have the right to ask administrative agencies to review by-law documents applied.

However, administrative decision issued within administrative agency is not object of administrative appeal. Article 8 of the Administrative Appeal Act 1999 states that a administrative decision inside administrative agency such as official decisions related to human resource management are not entitled to review.

The second main point is about government agency settling administrative appeal.

Administrative appeal law regulates that there are two categories of government agencies having the obligation to solve administrative appeal namely: (1) National Assembly, People's Committee and local governments (China's government has four levels) and (2) administrative agencies in particular field such as education, custom, tax ...).

Appeal law regulates that administrative appeal process has two modes, they are one-level mode and two-level

mode, and most appeal cases are fixed through one-level mode. In one-level mode, the individual firstly requests public agencies review their decisions. If they don't agree with the decision on the settlement of the administrative appeal, they are not allowed to appeal to the immediate higher level of the State agency. By contrast, in two-level mode they are entitled to petition the immediate higher level of the State's agency.

Nowadays, China is actively creating independent decision-reconsideration organizations operating as administrative appeal tribunal which is separated from public agencies. The member of appeal tribunal panel is not official servant. Their responsibility is about to review independently the decision made by public organizations. In many places in China, local government provides them with professional license to take this job (Fang Jun, 2007).

The third main point is about appeal procedure.

The interesting point in appeal procedure is that involved people in administrative appeal case can appoint their attorneys to participate in the case^(*). China law does not regulate as well as prohibit lawyer representing their clients. This point makes public agency more careful in dealing with

^(*) Chinese National Assembly: the Administrative Appeal Ordinance 1999, Article 10.

administrative appeal requested by citizens. It also reflects the principles of the state of law and rule of law in protecting the rights of citizens.

China's administrative appeal procedure has an outstanding regulation to improve quality of appealing service which provided by appeal-settlement agency. In order to help the individual who does not know which public agency is responsible to legally receive their claims, they can send complains to the local government^(*). The local government must pass complains to the correct agency. This regulation reflects the sense justice in public administration as well as democracy and humanity in public administration practice.

2. Some observations and implication for Vietnam

By analyzing the main content of China's appeal law, some observations are withdrawn.

First, although China has dispute-settlement mechanism of administrative judication, China still attracts more and more attention to dispute-settlement mechanism of judicial administration. China considers this method as a key mechanism to supervise and self-correct mistakes in public administration. Besides strong advanced points, China's appeal law remains the "peaceful relationship"

between administrative agencies and managed entities. This is suitable with Chinese social manner in which people do not like to participate in appeal lawsuits. It can be said that the existence of both dispute-settlement mechanisms of judicial administration and administrative judication is the best choice for China.

Second, in China, most administrative appeals are settled by the immediate higher agency, whereas in Vietnam they first and foremost settled by the agency who made decision. The law makers in China and Vietnam may have different approaches to the same problem. Vietnam's law system concentrates on the negotiation between administrative agencies and managed entities to find out solutions. By contrast, China's law system focuses on the way in which administrative dispute could be settled more judicially; therefore the state's agency who makes contravened decision review its owned decision. Each country has particular thought about this issue. So that the question whether which one is better is not answerable and only be answered through practice; but it is not easy. In Vietnam, there is the fact that the state agency making contravene-law decision still effectively reviews and fixes its decision.

Third, in China, most administrative appeal is settled in one level mode. The higher agency made a final administrative decision about appeal.

^(*) Chinese National Assembly: the Administrative Appeal Ordinance 1999, Article 15.

If the appellant does not agree with this decision, they can choose a judicial reconsideration in administrative court (Huang Yu Rong, 2005: 99). However, in Vietnam, administrative appeal is settled in two-level mode; therefore, appellant has two opportunities to review administrative decision through method of judicial administration. This allows appellants taking advantages of judicial administration whenever they needs.

Fourth, China appeal law regulates that dispute-settlement organizations are under the administrative agency system. It makes decisions as well as reviews those decisions. There are the contemporary thought, idea, increasing tendency that dispute-settlement organizations should be independent from administrative agency in order to improve justice, democracy, transparency. From this point of view, China is creating independent appeal tribunal at every level of government. China also is training appeal tribunal member force so that no administrative officer take a role of decision maker as well decision reviewer^(*).

In order to improve Vietnam's appeal law, the China's law and its practice should be studied. In reality, Vietnam Government Inspectorate has issued a

plan of building independent administrative dispute-settlement organization in administrative system. However, this plan is seemingly not supported by administrative agency. Studying this aspect in China may provide correct solutions (Cam Van, 2010).

Fifth, related to object of administrative appeal, China allows citizens appealing by-law documents^(*). This point should be studied and applied carefully in improving the nation's appeal law. Although Vietnam has issued legal documents to review and fix by-law document, this process is not part of administrative appeal. So that, in practice, administrative appeal may be solved confusedly or even unfixable.

Sixth, China allows appellant sending administrative complaints to local government where administrative decision is made. This point is not too big but it shows activeness of public agencies in providing appeal service. This point is a good implication for Vietnam □

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