

Definition of the Concept of Administrative Disputes

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Abstract: *Administrative dispute is a fundamental concept that requires clarification in the realm of administrative law theory. However, there is a lack of well-defined definitions of administrative dispute in this field, and varying perspectives exist. This paper aims to address this gap by establishing a definition of administrative disputes based on four key elements: the subject, object, motivation for formation, and external manifestation of such disputes. By doing so, this paper seeks to make a modest contribution to the prevention and resolution of administrative disputes.*

Keywords: administrative disputes, prevention and resolution of administrative disputes, externalization of administrative disputes.

1. ANALYSIS OF THE MEANING OF ADMINISTRATIVE DISPUTES

1.1 The meaning of dispute

Administrative disputes should naturally be included in the definition of disputes. Therefore, in defining administrative disputes, it is necessary to first determine the meaning of disputes. Dispute (also referred to as conflict or controversy) is currently defined from the sociological and legal perspectives. According to some scholars, a dispute can be defined as "a specific subject that arises from a conflict of interests and involves a bilateral or multilateral confrontation" [Fan Yu, Theory and Practice of Dispute Resolution, Tsinghua University Press, 2007 edition]. This concept characterizes a dispute as a confrontation, emphasizing the disruption of order or balance caused by such behavior. While some scholars consider the confrontational behavior of the parties involved in the administrative dispute as a fundamental element, they also emphasize the importance of the conflicting consciousness of the parties and their commitment to that consciousness. In contrast, Gu Peidong takes a broader perspective on the definition of dispute, contending that conflicts can exist without the need for interactive hostility between individuals. He argues that violations of the social order in a broader sense, which encompass entities such as natural persons and groups that hold power, interests, or prestige, also constitute conflicts.

1.2 Meaning of administrative disputes

There are several definitions of the concept of administrative dispute in administrative law, and different views exist among scholars. According to some scholars, administrative disputes refer to conflicts between the administrative subject and individuals (citizens, legal persons, and other organizations) during the exercise of public power. These disputes can be resolved according to public law, as suggested by Yang Shuxiang in his article "On Administrative Disputes - On the Distinction between Administrative Disputes and Civil Disputes" published in the Journal of Southwest University of Political Science and Law in 2004 (1). This definition is also supported by many other scholars.

With the development of society, administrative disputes have become increasingly diverse. China is currently undergoing a period of transition, leading to a growing awareness among the people of their rights and interests. This increasing consciousness has resulted in a more diverse range of interests, which, if infringed upon, can be resolved through various methods. Apart from administrative litigation, a significant number of cases are resolved through means such as letters and visits, administrative reconsideration, and administrative mediation. An analysis of the underlying reasons for this phenomenon reveals that, in addition to the difficulties in implementing court decisions and the traditional concept of "officials protecting each other," people are not only concerned about whether the administrative body's behavior complies with existing laws, but also whether it aligns with their own value judgments. Therefore, the resolution of administrative disputes is not limited to administrative litigation alone. When individuals believe that the administrative body has violated their rights and interests by disregarding the principle of reasonableness, they may turn to other channels such as writing letters and petitions. Through the use of "power to pressure the right," they can quickly and effectively resolve disputes and safeguard their own rights and interests. Given the increasing diversification of administrative disputes, the author agrees with defining administrative disputes from a broader perspective in order to enhance understanding of disputes and dispute resolution. This definition is also consistent with the central concept of the conflict theory perspective. Conflict theory scholars argue that resources in society are limited, and individuals must compete endlessly for these resources in order to survive and thrive. Consequently, society becomes a breeding ground for conflict. While this state of affairs has its drawbacks, such as the potential destruction of the existing social order when conflict becomes excessive, it also bears significant advantages. For instance, conflict has the capacity to challenge the constraints imposed by the prevailing social system. Moreover, conflict serves as a catalyst for social development, propelling society forward. Therefore, acknowledging the presence of numerous administrative disputes, addressing them directly, and resolving them through reasonable means to restore balance can have a positive impact on

maintaining social order and promoting overall societal development.

To sum up, the author asserts that administrative dispute refers to a situation where an administrative subject perceives that their rights and interests are violated by an administrative act, leading to a psychological resistance. This psychological resistance is manifested externally as a state of confrontation.

2. THE CONSTITUENT ELEMENTS OF ADMINISTRATIVE DISPUTES

2.1 Subjects of administrative disputes

The parties involved in administrative disputes include the administrative subject, the administrative relative in a broad sense, as well as third parties affected by the administrative behavior.

The subject matter of administrative legal relationships encompasses both administrative subjects and administrative relatives. Administrative subjects can be further divided into administrative organs and other entities authorized by laws and regulations, as well as other social public power organizations. The administrative subject, being a party to administrative disputes, is undoubtedly the subject of such disputes, and thus, there is no need to elaborate further on this aspect. However, the determination of who can qualify as an administrative relative, and therefore become a party to administrative disputes, remains a subject of controversy. According to Jiang Mingan's perspective, an administrative relative refers to the party that has a legal relationship with the administrative subject in terms of administrative management. In other words, the actions of the administrative subject can impact the rights and interests of individuals and organizations, making them an administrative relative. The administrative relative can be further categorized into direct relative, indirect relative, abstract relative, concrete relative, and so on [Jiang Mingan: *Administrative Law and Administrative Litigation Law* (5th edition), Beijing University Press and Higher Education Press, 2011 edition]. In the aforementioned discussion on the concept of administrative disputes, it can be observed that some scholars exclude the abstract relative from the scope of administrative disputes. However, this paper disagrees with this viewpoint and argues that the concept of administrative relative should be understood in a broader sense. Whether the relative is directly affected by a specific administrative action or an abstract administrative action that infringes upon their interests, they can still be considered as subjects of administrative disputes.

Administrative disputes can involve multiple parties, including the third person affected by an administrative act. According to Article 27 of China's Administrative Litigation Law, individuals, legal entities, or organizations with a stake in a specific administrative act can participate in litigation as a third party or be notified by the people's court to join the litigation. The right of a third party to initiate administrative proceedings is further clarified in Article 12 of the Interpretation of the Supreme People's Court on Certain Issues Concerning the Implementation of the Administrative Procedure Law of the People's Republic of China. It states that if a citizen, legal entity, or organization with a legally beneficial interest is dissatisfied with an administrative act, they may initiate administrative proceedings in accordance with the law. These provisions allow for the resolution of disputes through litigation by third parties involved in administrative acts and establish their subjective qualification in administrative disputes. China's Administrative License Law takes into consideration the right of interested parties to express their opinions during the licensing process, and also recognizes the subjective qualification of third parties involved in administrative acts in administrative disputes.

2.2 Object of administrative disputes

The objective of administrative disputes is to address the administrative act that the concerned party believes violates their rights and interests. Administrative acts can be categorized as administrative legal acts and administrative factual acts. Administrative legal acts can further be classified as unilateral administrative acts and two-party administrative acts, with unilateral administrative acts further subdivided into abstract administrative acts and specific administrative acts. Both sides of administrative behavior, such as administrative contract disputes, have traditionally been resolved through civil litigation procedures. However, relief for such disputes also encompasses administrative review, administrative litigation, and requests for administrative compensation. According to Yu Lingyun, the administrative contract fundamentally serves as a means for administrative organs to carry out administrative policies and achieve administrative objectives in the field of public administration. In the contract, the main relationship formed is the rights and obligations relationship under administrative law. Therefore, the resolution of disputes arising from this relationship should be adapted to administrative law and addressed through administrative remedial measures. Moreover, more importantly, if there are no public law remedies available to resolve disputes over administrative contracts, it will further contribute to the growing trend of 'public law disappearing into the judiciary'. This, in turn, will result in the stifling and shrinking of the theory of administrative contracts within the realm of administrative law. (Source: Yu Lingyun: *Administrative Contract Theory* (2nd ed.), People's University of China Press, 2006 edition.). Therefore, it is crucial to recognize that administrative disputes can also arise from unilateral administrative acts and should be addressed through administrative channels. Unilateral administrative acts encompass both specific administrative acts and abstract administrative acts, with the former being the primary cause of administrative disputes. However, the discussion of specific administrative acts will not be delved into here. The rise of theories such as administrative promise behavior and administrative guidance behavior has blurred the boundaries between abstract administrative action and specific administrative acts. Furthermore, certain administrative legislative acts may also face resistance from individuals who believe that their

interests have been directly or indirectly infringed upon by these abstract administrative actions. Although such cases may not fall within the jurisdiction of the judiciary according to China's "Administrative Litigation Law," the resistance expressed by those affected may be externalized in the form of confrontational protests against these administrative actions, thus giving rise to administrative disputes.

Hence, is it only illegal administrative behavior that can cause disputes? The author believes that the purpose of this paper is fundamentally to reduce the generation of administrative disputes from a social consciousness perspective, rather than solely focusing on the traditional administrative law theory and arguing about the legitimacy of administrative acts. According to Gu Peidong's viewpoint, disputes are not necessarily constituted by contradictory behavior between two parties, but rather by the deliberate adherence to disputes by the party with contradictory consciousness. [Gu Peidong: *Social Conflict and Litigation Mechanism*, Sichuan People's Publishing House, 1991 edition.] . Even if an administrative act fully complies with the provisions of the law, if it lacks reasonableness, it may still be questioned. Therefore, when an administrative act is executed by an administrative entity, if the affected party sincerely believes that the act violates their rights and interests, irrespective of the act's legality, it can potentially lead to an administrative dispute.

2.3 Motives for the formation of administrative disputes

The motivation behind the formation of administrative disputes refers to the resistance or awareness that arises in practice when the administrative relative believes that their interests have been infringed upon by an administrative act, which is the object of the administrative dispute. As society continues to progress, the object of administrative disputes also becomes more diversified. Due to the existence of lag and other defects, the law is far from being able to encompass the entire scope of the object of administrative disputes. Therefore, the legality of administrative behavior cannot be the sole standard for determining the object of administrative disputes. When administrative personnel subjectively believe that their rights and interests have been violated, it can lead to the psychological generation of resistance towards the infringement of their rights and interests through administrative actions. In such cases, the clash between the values, psychology, and other factors of the administrative personnel and the outcomes of administrative behavior gives rise to the motivation for administrative disputes.

To establish trust in the government, the administrative authority should take into full consideration the factors that contribute to the formation of administrative dispute motives when making administrative acts. This will make the process of making administrative acts more reasonable and minimize the psychological resistance of the administrative relative, ultimately reducing the occurrence of administrative disputes.

2.4 The externalization of administrative disputes

The externalization of administrative disputes refers to the confrontational behavior exhibited by individuals involved in administrative matters. Disputes consist of two components: the awareness of conflicting motives and the outward expression of these contradictions through behavior [Fan Yu, *Theory and Practice of Dispute Resolution*, Tsinghua University Press, 2007 edition]. The externalization of administrative disputes occurs when an individual perceives that an administrative action taken by an administrative entity infringes upon their rights and interests. As a result, they develop a psychological resistance or consciousness towards the administrative act, leading them to choose confrontational means to express their resistance. The actions taken by the administrative relative during the process of administrative disputes are the external manifestations of the disputes. These actions typically include administrative litigation, administrative reconsideration, letters and visits, self-help, violence, etc. They directly determine the nature of the dispute, the intensity of the dispute, and the difficulty in finding a solution.

The number of disputes resolved through administrative litigation and administrative reconsideration is significantly lower compared to the number of disputes resolved through letters and petitions. This discrepancy does not indicate that the public is fearful of the government and reluctant to sue them. Instead, it reflects the administrative staff's lack of trust in the government. Administrative reconsideration involves the review of cases by higher-level administrative bodies, which often leads to doubts regarding the phenomenon of "officials protecting each other." Consequently, trust becomes difficult to establish. Similarly, the administrative litigation process faces challenges in achieving true judicial independence due to financial constraints and government interference. These circumstances contribute to a sense of distrust among administrative staff. Many people believe that there is a phenomenon of "power over law", making it challenging to achieve the desired purpose through the aforementioned methods. They argue that the true realization of relief rights can only be achieved through "power over power". In the process of petitioning, the administrative relative often applies pressure on the government through various extreme means, forcing the government to compromise and eventually obtain the realization of rights and remedies. If this approach fails to resolve the resistance sentiment, the administrative relative may even resort to self-relief and violent solutions, such as violent resistance and self-immolation during the process of demolition and relocation.

Whether a relative is satisfied with the outcome of a dispute resolution depends on their trust in the government and the stability of social order. The increasing number of petitions suggests that people are unable to achieve the desired results through legal means, prompting them to seek the intervention of a larger third party to protect their legitimate rights and interests. However, it is unrealistic to expect the government to completely replace the judiciary as the primary force in dispute resolution. Therefore,

it is important to consider how to improve the legal channels and build trust among the people. It is also worth exploring whether administrative disputes can be resolved through alternative channels in order to minimize their occurrence.

3. THE SIGNIFICANCE OF DEFINING THE CONCEPT OF ADMINISTRATIVE DISPUTES

China is currently undergoing internal institutional reform, resulting in a shift from a monistic to a pluralistic social structure. This transition indicates that our society is in a period of transformation. During this phase, there is a gradual increase in people's subjective consciousness, reflecting a trend towards subjective pluralism. Subjective pluralism refers to the existence of diverse interests, which in turn leads to a multitude of disputes and intensified conflicts due to the imbalance of these interests. However, the institutional reforms have not kept pace with the aforementioned trends, resulting in escalating conflicts, resistance to law enforcement, and mass incidents. Therefore, it is necessary to find ways to effectively and maximally resolve administrative disputes. To address administrative disputes, it is crucial to first understand what constitutes an administrative dispute. However, existing academic research on this issue mostly focuses on analyzing the construction of diversified dispute resolution mechanisms, while the precise definition of administrative disputes is rare. Therefore, the author seeks to provide a precise definition of administrative disputes from this perspective, in order to generate further interest and discussion on this topic.

According to the social contract theory, individuals relinquish certain rights to the government, thereby empowering the government to uphold and manage social order. Consequently, when making administrative decisions, the government cannot disregard the public's positive or negative stance on the proposed actions. Therefore, it is essential for the administrative body to consider various factors including social ideology, historical traditions, customs, and other relevant aspects, in addition to adhering to the fundamental principles of the law. (Here, the term "law" does not solely refer to current legal norms, as per the perspective of natural jurists, who argue that unjust laws are not truly lawful.) Especially in practice, administrative organs often make decisions based on government or departmental interests, using non-legal normative documents such as red-top documents. However, it is important to note that these decisions themselves possess legal elements. Therefore, when referring to "law" in this context, it is understood as the concept advocated by natural jurists, commonly known as the "good law". By implementing good law, the government can establish trust from the root, leading to the maintenance of social order and stability. Whether an administrative dispute is truly resolved depends on whether the parties involved feel that they have achieved the desired outcome, and whether a positive social impact has been achieved. The application of actual law serves as a tool in the process of resolving administrative disputes, but achieving the purpose of administrative dispute resolution requires consideration of various factors, such as politics, customs, traditional practices, and social ideology. Therefore, under the current circumstances, the participants in administrative dispute settlements, including judges and administrative entities, should not only be familiar with the content of substantive law to assess the legality of administrative actions, but also have a thorough understanding of the corresponding legal framework. This allows them to determine the reasonableness of administrative actions and necessitates a clear understanding of the precise meaning of the concept of administrative disputes. Therefore, these participants must be well-versed in the exact definition of administrative disputes. However, given the current national circumstances, it is evident that the professional ethics and professionalism of many dispute settlement entities have not yet reached the desired level. In light of this, it is of great significance to conduct a detailed analysis of the concept of administrative disputes, refine our understanding of disputes, and strive to achieve more effective dispute resolution. This is important for both practical implementation and further research in this field.

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