

The Standard and Adjudication Rule of the Principle of Proportionality Between Punishment and Penalty in Administrative Punishment—Take the “Sky-high Fine Case” as an Example

Hongyan Wang

School of Law and Public Administration, Yibin University, Yibin, Sichuan, China

Abstract: *The Administrative Punishment Law (2021 Revision) has enriched the connotation of this principle through 22 newly added provisions that further improve the administrative punishment procedure system, the introduction of the “first violation no penalty” system, and the establishment of administrative punishment concept clauses, thereby clarifying the principle’s significant position in the field of administrative punishment. However, recent years have seen heated public discussions about “over-punishment” cases, which reflect concerns or issues in some law enforcement agencies regarding the proper application of the principle of proportionality between offense and punishment. There have even been instances of administrative law enforcement personnel abusing administrative power, disrupting market environments, and drawing widespread social attention. Through analyzing typical cases, the author concludes how to align “offense” and “punishment” in administrative penalties to ultimately achieve “proportionality between offense and punishment” and realize justice in penalties, thereby promoting rational and scientific administration by law enforcement agencies.*

Keywords: Administrative penalty; Principle of proportionality between offense and penalty; Discretionary benchmarks for administrative penalties; Judicial fairness.

1. CASE INTRODUCTION

1.1 Case Introduction

On September 11, 2019, while commuting to work in the town, Chen Mou sold celery he had grown to his neighbor and then resold it at the town market, earning a 14 yuan profit from the price difference. The batch was purchased by a supermarket. During a routine inspection by the Market Supervision Bureau, the celery was found to contain excessive pesticide residues. After initiating an investigation and gathering evidence, the bureau applied Article 124 of the Food Safety Law. Considering Chen’s specific circumstances, the court imposed a lenient penalty: ordering him to rectify the violation, issuing a warning, confiscating the illegal proceeds of 14 yuan, and imposing a fine of 50,000 yuan.

After that, Chen did not apply for administrative reconsideration within the legal time limit, nor did he file a lawsuit. Since Chen did not pay the fine, the market supervision and administration department decided to impose an additional fine of 50,000 yuan on him, that is, a total fine of 100,000 yuan.

1.2 Dispute Focus and Adjudication Result

Chen argued that the fine was excessive, claiming he had only gained 14 yuan but was required to pay a 50,000 yuan penalty, which he found unreasonable and beyond his means. The Market Supervision Bureau, however, maintained that the department’s penalty against Chen was entirely lawful and compliant with regulations, with no issues whatsoever.

After conducting a comprehensive review of the case facts and considering the evidence provided by both parties along with relevant legal provisions, the court concluded: First, according to the test report, the batch of celery sold by Chen to the farmers ‘market contained chlorpyrifos residues exceeding national standards. Chen failed to obtain or retain the supplier’s identity documents, business name, address, contact information, or agricultural product procurement certificates, violating the Market Entity Registration Regulations and Food Safety Law. The illegal

facts were clearly established. Second, Chen did not intentionally sell pesticide-contaminated celery without knowing its non-compliance, and the illegal profits were minimal. Third, Chen was not a professional vegetable vendor. The celery was grown by a neighbor, and Chen merely assisted in resale. As this was Chen's first violation, administrative penalties should be waived under Article 33 of the Administrative Punishment Law.

1.3 Topic Introduction

In recent years, numerous cases of "unfair punishment" have frequently trended on social media, sparking intense public outrage. To address these issues and promote judicial fairness, it is crucial to conduct scientific theoretical analysis of such cases. By examining their fundamental concepts, legal basis, and regulatory frameworks, we can systematically identify core problems and ultimately develop reasonable solutions.

2. THEORETICAL OVERVIEW OF THE PRINCIPLE OF PROPORTIONALITY BETWEEN OFFENSE AND PUNISHMENT

2.1 The Connotation of the Principle of Proportionality Between Offense and Punishment

The principle of proportionality between punishment and penalty was first put forward by the legislative body in the Administrative Punishment Law enacted in 1996. After three revisions, the substantive connotation of this clause has not changed, but only the order of the clause has been adjusted.

From a legal perspective, Articles 3 and 5 of the Administrative Punishment Law explicitly require that administrative penalties be established and enforced in accordance with the principle of proportionality between offense and punishment. This demonstrates the principle's pivotal guiding role in the evolution of administrative penalty regulations. Both the General Provisions and Specific Provisions elaborate on this principle through detailed clauses, while also expanding its application scenarios—for instance, exempting first-time offenders from penalties. Such provisions significantly enrich the conceptual framework of the principle of proportionality between offense and punishment.

Through extensive review of legal documents, it becomes evident that administrative penalty regulations universally adhere to the principle of proportionality between offense and punishment. For instance, Gansu Province has issued specific "Normative Provisions" regarding discretionary powers in administrative penalties, while laws such as the "Law on Public Security Administrative Penalties" explicitly uphold this principle. In recent years, under the guidance of the CPC Central Committee, local governments at all levels across China have actively established rule-of-law governments by promulgating various regulations, ordinances, and policy directives. These efforts have provided stronger legal foundations for implementing this fundamental principle.

In 2014, China amended its Administrative Litigation Law, notably introducing supplementary provisions on annulment judgments. The revised law established "manifestly inappropriate" as a legal basis for judgment, replacing the previous "manifestly unjust" in Article 77(1). When administrative penalties issued by authorities are found to be manifestly inappropriate, courts may exercise their powers to revoke or modify such decisions. Furthermore, the reasoning sections and rulings in Supreme People's Court announcements and a series of exemplary administrative cases clearly demonstrate the application of the principle of proportionality between offense and punishment.

The author maintains that the principle of proportionality between offense and penalty requires administrative penalties to be proportionate to the offender's factual circumstances, specific circumstances, nature of the act, and social harm. This principle should be implemented through two key requirements: First, administrative law enforcement authorities must conduct case-by-case analysis when determining penalty severity, evaluating objective factors including illegal facts, nature, circumstances, and social harm. This requirement essentially imposes obligations on both administrative bodies and courts. Specifically, administrative authorities must clearly define illegal acts when issuing penalties, while courts must objectively assess the nature of offenses and their social impact through legal provisions during judicial review, thereby implementing the principle of reasonable punishment. Second, courts and administrative agencies should determine whether to exempt, mitigate, or aggravate penalties based on the nature and severity of illegal acts.

2.2 The Development of Judicial Practice of the Principle of Proportionality Between Offense and Punishment

In 2013, the Supreme People's Court released a series of classic administrative penalty cases, with the "Suzhou Dingsheng Food Co., Ltd. Case" being representative in terms of penalty principles. It can be said that before 2013, the principle of proportionality between penalty and offense had hardly been mentioned in judicial practice. Consequently, there had been inconsistent interpretations of this principle in judicial practice. Notably, many courts did not cite specific legal provisions when ruling, instead directly applying the principle. It is worth mentioning that courts used the principle of proportionality to interpret Article 5 of the Administrative Penalty Law in Guo Jianjun's appeal regarding the Land and Resources Bureau's improper penalty. Later, the Supreme Court explicitly applied the principle of proportionality to interpret the second paragraph of this article, and gradually began to incorporate this principle into rulings by local courts. However, through searching relevant cases on platforms like the Judgments Online and Beida Fabao, it is evident that many administrative cases failed to delve deeper into explaining this principle or substantiate its implications from a judicial perspective, merely touching on it superficially. For instance, while courts imposed administrative penalties on Fang Fulin in the "Zui" case based on the principle of proportionality between penalty and offense, they similarly failed to provide further justification—specifically, why the principle should be followed in administrative penalty decisions.

In 2018, the Supreme Court included the "Chen Chao Case" among exemplary administrative cases. However, when applying the principle of proportionality between offense and punishment, it failed to provide comprehensive judicial interpretations or in-depth analysis of its content and implications. The guiding case interpreted Article 5 of the Administrative Punishment Law through the principle of proportionality. Notably, the appellate court in this case also adhered to the same reasoning, maintaining that proportionality is a fundamental principle in administrative law, and that administrative penalty decisions must comply with the requirements of this principle.

The author has systematically analyzed the different stages of application of the principle of proportionality between offense and penalty in practice. A comparative examination of its development reveals that prior to the People's Court's judgment in the Suzhou Dingsheng case, the Supreme Court had not provided a clear judicial interpretation of Article 5(2) of the Administrative Punishment Law. For an extended period, neither judicial nor administrative authorities had established clear positions regarding the application of this provision, leaving it in a state of ambiguity. The lack of independence in China's substantive law regarding the principle of proportionality between offense and penalty is one of the primary causes of this issue. In fact, both legislatively and practically, it is necessary to establish this principle as an independent legal principle distinct from other administrative legal principles.

3. ANALYSIS OF THE APPLICATION OF THE PRINCIPLE OF PROPORTIONALITY BETWEEN PUNISHMENT AND OFFENSE IN ADMINISTRATIVE PENALTIES

The Administrative Penalty Law fails to comprehensively organize and clarify the discretionary factors of the principle of proportionality between offense and penalty. It only specifies four criteria for determining whether an illegal act constitutes "excessive severity": the factual basis of the act, its nature, the degree of harm to society, and specific circumstances. This legal framework inherently contains structural flaws. Moreover, the wording of the legal provisions regarding "excessive severity" remains overly vague and abstract, heavily relying on the subjective judgment of administrative enforcement officers during implementation. This often leads to inconsistent penalties among colleagues, creating not only obstacles for grassroots enforcement personnel but also challenging the public credibility of administrative agencies.

The author searched for the keyword "proportionality between offense and punishment" in China's judicial documents online, searching for the type of "administrative cases", and found a total of 2085 documents, among which 1079 were from basic people's courts, 895 from intermediate courts, while only 108 were from high courts and the Supreme Court. This shows that there are significant problems in the application of the principle of proportionality between offense and punishment in basic administrative law enforcement.

Through reviewing judicial documents, the author found that most court rulings merely restate the principle of proportionality without providing detailed analysis in their reasoning sections. Few courts explicitly explain how "excessive punishment" aligns with "punishment commensurate with offense" criteria, often leading to hasty verdicts. This reveals that courts at all levels lack clear standards for applying the principle of proportionality in

administrative penalties and judicial practice, resulting in a state of confusion within the legal system.

3.1 Overly Simplistic Considerations

To ensure administrative penalty cases adhere to the principle of proportionality between offense and punishment, law enforcement agencies must conduct comprehensive evaluations considering multiple factors. While legal provisions outline general criteria for assessing the severity of violations—including the nature of the act, factual circumstances, societal harm, and specific aggravating or mitigating factors—the unpredictable nature of real-world cases and parties involved makes these four-dimensional assessments inherently inadequate. Although legal frameworks cannot encompass all determinants, three decades of practical experience have yielded substantial factual precedents that allow extraction of universal evaluation parameters. In practice, administrative authorities often neglect critical considerations such as public justification, enforcement scope, impact breadth, consequences, illegal income, family income, human rights protection, and proportionality principles when issuing penalties. Reaching hasty conclusions and applying them to offenders inevitably leads to unjust decisions. In today's rapidly evolving society, where legal frameworks frequently lag behind social developments, emerging phenomena often fall within legal "gaps." This situation grants administrative agencies greater discretion in penalty implementation, necessitating enhanced legal provisions that specify concrete evaluation criteria. Even in the absence of explicit administrative penalty regulations, courts should apply the proportionality principle to ensure penalties align with social development trends, demonstrating both reasonableness, fairness, and legality. In the administrative penalty case of *Chen Chao v. Jinan Passenger Transport Management Center*, dubbed the "first ride-hailing case", both the first-instance and appellate courts explicitly stated in their rulings that while regulating social conduct through existing laws is essential, it is equally crucial to comprehensively evaluate case-related factors. The judgments also emphasized considering public sentiment and maintaining appropriate judicial discretion to accommodate future social development and legal changes.

3.2 The Criterion of Proportionality is Not Clear

The primary criterion for determining whether "punishment" aligns with "violation" is "proportionality." While legal frameworks should establish clear standards for assessing proportionality, the Administrative Punishment Law lacks specific criteria for evaluating this principle. This absence of fundamental benchmarks creates significant challenges for courts and administrative agencies in determining whether penalties are commensurate with violations—particularly when considering social consequences. The landmark "Hangzhou Youyou Snack Shop Case" exemplifies this issue, where judicial authorities primarily assessed the principle through the lens of "violation." The retrial judgment stated: "Although the applicant's advertising activities posed social risks, they were not severe. The court should apply the principle of proportionality and combine punishment with education, while considering mitigating factors in the case." This demonstrates judicial failure to thoroughly evaluate the alignment between "violation" and "punishment," compounded by the Administrative Punishment Law's lack of clear standards. To resolve this, the author proposes establishing specialized criteria and supporting enforcement mechanisms.

3.3 Unclear Discretion of Law Enforcement Agencies in Imposing Penalties

The principle of proportionality between penalty and offense is a fundamental guideline for implementing administrative penalties. While administrative law enforcement agencies are fully aware of this principle, they must never overstep legal boundaries when handling specific cases. As exemplified by the "astronomically high fine case" cited in this article, both the administrative authority and the affected party feel aggrieved. In such scenarios, where there's no legal basis for leniency, the penalty decision must not fall below the statutory minimum fine threshold. Any deviation would constitute illegal conduct and even raise suspicions of dereliction of duty. This explains why both parties view the court as the "judge". While courts may rule against compulsory enforcement based on legal principles, law enforcement agencies cannot impose penalties through theoretical reasoning—they must strictly adhere to specific legal provisions. The principle that "nothing can be done without explicit legal authorization" remains the essential rule that administrative authorities must rigorously follow.

When numerous cases of disproportionate penalties emerge, law enforcement agencies may impose punishments in accordance with the law, yet still face public skepticism and opposition. Even when courts ultimately 'settle the score' for administrative counterparts, it further tarnishes the reputation of law enforcement agencies. This essentially represents the immense pressure and 'dilemma' currently confronting grassroots administrative law enforcement agencies.

To address the current chaotic application of the principle of proportionality between offense and penalty, we should reduce the subjective and arbitrary nature of discretionary judgment in imposing penalties. This requires exploring practical approaches to reasonably apply the principle of proportionality, while further refining the regulatory framework for such discretion. By doing so, we can achieve the goal of fairness in administrative penalties and establish a scientific, rigorous, and comprehensive regulatory system for proportionality between offense and penalty.

3.3.1 Typification of factors to be considered

1) Objective factors

The nature of administrative violations. The essence of administrative misconduct lies in determining whether it constitutes “serious or minor offenses,” which requires evaluating the specific illegal methods employed. For instance, production activities are considered more severe than sales activities; selling counterfeit or substandard drugs is deemed more serious than selling expired food; and repeated violations carry greater severity than first-time offenses. In practice, when addressing various types of administrative violations, law enforcement agencies should impose different penalties based on specific circumstances. Production activities, for example, are inherently more serious and have broader impacts, resulting in significantly greater actual harm.

2) Subjective factors

The nature and degree of fault. Fault is primarily categorized into intentional and negligent types. The illegal nature of intentional misconduct is significantly more severe than negligent misconduct. Additionally, the extent of fault is also a key consideration. First, the nature and degree of fault. The nature of fault is primarily divided into intentional and negligent types. The illegal nature of intentional misconduct is clearly more serious than negligent misconduct. Moreover, the extent of fault is also a crucial factor. Second, the motive behind the act. The motive essentially reflects the reason for the individual’s actions. If there are specific causes behind the illegal conduct, it can be inferred that the perpetrator’s subjective malice level exists, which may serve as a factor in determining the severity of punishment.

3.3.2 Clarifying the rules of equivalent adjudication

The adjudication of proportionality can essentially be determined by using the “mother principle” of the principle of proportionality and the “sub-principle” of the principle of proportionality.

Equilibrium is a crucial consideration in administrative penalties. Balancing “punishment” and “restraint” fundamentally involves value assessment. To achieve equilibrium among stakeholders in administrative penalties while ensuring necessity and appropriateness, a careful weighing of interests is essential. When the rights of society and the public that administrative authorities aim to protect cannot be adequately compensated through penalties, or when the punitive measures and their severity fail to effectively deter and educate offenders, thereby minimizing the social harm of illegal acts and guiding other relevant parties to comply with administrative regulations, such penalties violate the principle of proportionality and fail to meet equilibrium requirements.

In addition, considering the social impact of administrative punishment, administrative organs and courts should specify the detailed “equivalence” judgment process in their decisions or judgments when facing cases with the risk of “over-punishment”, so as to withstand the test of the public.

3.3.3 Correctly regulate the discretion of administrative penalty “proportionality between offense and punishment”

As crucial administrative law enforcement agencies, market supervision departments must consistently adhere to the fundamental principle of “proportionality between offense and penalty” when conducting oversight and enforcement. However, in practice, they are strictly bound by specific legal provisions. Administrative law enforcement agencies cannot deviate from these statutory requirements, which legislators have explicitly mandated. This situation ultimately results in legislators failing to adequately empower enforcement officers during the legislative process to handle the complex realities of practical operations. Consequently, enforcement officers face numerous constraints and challenges when exercising their authority, leading to the phenomenon of “paradoxical enforcement” where penalty decisions become “inappropriate in proportion to offenses.”

Article 32(5) of the Administrative Punishment Law should be interpreted in two dimensions. Firstly, it establishes specific provisions for mitigating penalties within legal frameworks, as exemplified by Article 55 of the Product Quality Law. Secondly, it allows for industry-specific provisions that may reduce administrative penalties based on sectoral characteristics and practical needs. This dual approach not only empowers administrative agencies to exercise discretion in ensuring “proportionality between offense and punishment” through regulatory measures, but also addresses the limitation of existing laws where initial fines for violations remain excessively high, thereby failing to meet practical enforcement requirements.

4. EPILOGUE

The essence of law lies in its implementation, and its authority originates from enforcement. The principle of proportionality between offense and penalty is a crucial tenet in the Administrative Punishment Law. When enforcing administrative penalties, authorities should conduct case-specific analyses and apply principles such as “first offense exemption,” “combining penalties with education,” and “lenient punishment” to ensure proportionality and balanced enforcement. This not only meets the requirements of strict, standardized, fair, and civilized law enforcement but also fulfills the public’s legitimate expectations for justice. To achieve the fundamental goal of education and guidance while striving to resolve social conflicts and maintain social harmony, administrative agencies must fully leverage the pivotal role of proportionality in administrative penalties. This approach will propel progress toward a more rational and scientific administrative governance system.

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