

Discussion on judicialization of administrative reconsideration and its construction

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Abstract: This paper aims to explore the judicialization of administrative review and its construction process. Judicialization of administrative review refers to the introduction of judicial elements into the administrative review process to make it more compliant with the principles of the rule of law and judicial procedures, thereby achieving fairness, transparency, and effectiveness in administrative review. Through the analysis of the concept, current practices, reasons and motives, legal basis and institutional safeguards, impacts, and evaluations of judicialization of administrative review, this paper seeks to delve into the essence and significance of judicialization of administrative review and its role in legal construction.

1. Introduction

In modern society, administrative review plays a crucial role in supervising the legality of administrative actions and safeguarding the rights of citizens. However, with the development of society and the enhancement of legal consciousness, the traditional model of administrative review has gradually revealed some deficiencies and limitations, leading to higher demands from the public for its fairness and efficiency. In order to better meet the needs of society for administrative review, many countries and regions have begun to explore the path of judicialization of administrative review, which involves introducing judicial elements into the administrative review process to enhance its fairness and transparency, further promoting the rule of law. This paper aims to comprehensively explore the essence, current practices, reasons and motives, legal basis and institutional safeguards, impacts, and evaluations of judicialization of administrative review, combined with case analysis, to fully analyze the significance, value, and role of judicialization of administrative review in legal construction. Through the study of judicialization of administrative review, we can better understand the evolution and development of administrative review mechanisms, provide theoretical support and practical guidance for promoting the legality of government actions and safeguarding citizens' rights, and propel administrative legal construction forward with more robust steps.

2. Concept and Essence of Judicialization of Administrative Review

2.1. Concept and Classification of Administrative Review

Administrative review refers to the process by which government agencies re-examine, evaluate, and adjudicate specific administrative actions they have taken. In a rule-of-law state, administrative review is one of the crucial avenues to safeguard citizens' rights and uphold administrative justice. Depending on their nature and the objects of review, administrative review can be categorized into different forms such as administrative supervision, administrative reconsideration, and administrative litigation. Firstly, administrative supervision involves internal monitoring and self-correction mechanisms implemented by government agencies to inspect and guide their administrative activities, ensuring their legality, regularity, and efficiency. Administrative supervision is typically conducted by administrative supervisory bodies or other relevant departments within administrative agencies. Secondly, administrative reconsideration refers to the process by which administrative agencies review and adjudicate specific administrative actions taken by subordinate administrative bodies. Administrative reconsideration is usually carried out by superior administrative agencies or administrative review bodies, aiming to rectify errors or improper conduct by subordinate administrative bodies and safeguard the legality and fairness of administrative decisions. Finally, administrative litigation refers to the judicial procedure initiated by citizens, legal persons, or other organizations against specific administrative actions taken by administrative agencies, seeking judicial review, annulment, or alteration of administrative decisions. As a supplementary means of administrative review, administrative litigation plays an essential role in safeguarding citizens' legitimate rights and interests and supervising the conduct of administrative agencies.

2.2. Concept and Characteristics of Judicialization

Judicialization refers to the process of introducing judicial procedures, legal principles, and judicial institutions into specific areas or processes to enhance their fairness, transparency, and legal binding force. The essence of judicialization lies in bringing non-judicial matters or decisions into the realm of judicial procedures and judicial review to ensure equal protection of rights and strict enforcement of the law. The characteristics of judicialization primarily include the introduction of judicial procedures, legal binding force, judicial review, and legal application. Firstly, the introduction of judicial procedures is a core characteristic of judicialization. By incorporating matters or decisions into judicial procedures, judicial protection of rights and judicial resolution of disputes are realized, ensuring citizens' right to litigation in administrative activities. Secondly, judicialization implies strengthened legal binding force on administrative actions. Administrative decisions or actions must comply with legal provisions and judicial standards; otherwise, they may be annulled or altered by judicial institutions, thereby ensuring the authority and stability of the rule of law. Moreover, the judicialization process often involves judicial review procedures and standards. Judicial review scrutinizes the legality, rationality, and procedural legitimacy of administrative actions, ensuring the fairness and legality of administrative decisions. Finally, judicialization requires strict adherence to the application and enforcement of the law in administrative activities. Administrative decisions must comply with legal provisions and judicial interpretations, ensuring the legitimacy and stability of administrative power. In summary, as a means of administrative supervision and judicial protection, judicialization enhances the legality and fairness of administrative decisions by introducing judicial procedures and legal principles. It plays a significant role in building a rule-of-law society and safeguarding citizens' rights. Through the combination of administrative review and judicial procedures, traditional issues such as

administrative intervention and opaque procedures can be effectively addressed, ensuring that administrative decisions comply with legal provisions and judicial standards, thereby enhancing the legal binding force and judicial effectiveness of administrative review[1].

2.3. Meaning and Essence of Judicialization of Administrative Review

The meaning and essence of judicialization of administrative review lie in incorporating the administrative review process into the realm of judicialization by introducing judicial procedures and legal principles to enhance its fairness, transparency, and legal binding force. Traditional administrative review is mainly conducted by internal administrative agencies or specially established administrative review bodies, and its decisions have certain administrative nature, limited by the power scope and administrative procedural regulations of administrative agencies. In contrast, judicialization of administrative review emphasizes integrating the administrative review process and decisions into judicial procedures, giving them stronger legal effectiveness and judicial protection. The meaning of judicialization of administrative review emphasizes the requirements of judicialization during the administrative review process, including the introduction of independent judicial institutions, adoption of judicial procedures, and adjudication based on legal standards. Its essence lies in improving the fairness and legality of administrative review, safeguarding citizens' rights, and promoting the rule of law. By combining administrative review with judicial procedures, issues such as administrative intervention and procedural opacity inherent in traditional administrative review can be effectively addressed, ensuring that administrative decisions comply with legal provisions and judicial standards, thus enhancing the legal binding force and judicial effectiveness of administrative review[2]. The essence of judicialization of administrative review is the extension and deepening of the rule of law, which is an important means to promote the legality and fairness of government actions. Through judicialization, administrative review is no longer confined to internal administrative agencies but adjudicated by independent judicial institutions or courts, ensuring citizens' judicial protection and litigation rights in administrative disputes, and enhancing the legality and transparency of administrative decisions. Achieving judicialization of administrative review requires support from legal systems and judicial systems, as well as cooperation and coordination between administrative and judicial institutions, to jointly promote the construction of the rule of law and safeguard citizens' legitimate rights and interests.

3. Current Status of Judicialization of Administrative Review

3.1. Historical Evolution of Judicialization of Administrative Review at Home and Abroad

The historical evolution of judicialization of administrative review at home and abroad can be traced back to the late 19th and early 20th centuries. In the traditional model of administrative review, administrative agencies conducted reviews of administrative actions, and the rulings had a distinct administrative nature. However, with the rise of the rule of law and the improvement of judicial systems, there has been a trend towards judicialization of administrative review both domestically and internationally. Internationally, some advanced countries such as France, Germany, and the United States began incorporating administrative review into judicial procedures in the early 20th century. For example, France's Council of State (Conseil d'État), established in the 19th century, has the power to conduct legal review and rulings on administrative actions, becoming a model of judicialization of administrative review. Germany's administrative court system and the administrative litigation system in the United States also, to varying degrees, integrate administrative review into judicial procedures to safeguard citizens' legitimate rights and interests. In contrast, the historical evolution of judicialization of administrative review in China has

been more complicated. In the early 20th century, China initiated reforms in its judicial system, establishing the Supreme People's Court and various levels of people's courts. However, administrative review was still primarily conducted by administrative agencies themselves. It wasn't until the late 1980s and early 1990s that China began attempting to integrate administrative review into judicial procedures by establishing administrative courts and an administrative litigation system, marking the initial attempts at judicialization of administrative review. With the deepening of the rule of law, China's process of judicialization of administrative review has gradually accelerated, with relevant laws and regulations and judicial practices continually being improved and developed. In summary, the historical evolution of judicialization of administrative review both domestically and internationally has gradually progressed against the backdrop of legal construction and judicial system reforms. As society develops and the concept of the rule of law becomes more widespread, judicialization of administrative review will become an essential component of national governance, playing a significant role in safeguarding citizens' rights, promoting the legality and fairness of government actions.

3.2. Development Trends of Judicialization of Administrative Review

The development trends of judicialization of administrative review occupy a crucial position in contemporary legal construction. As the concept of the rule of law becomes increasingly ingrained, administrative review will gradually be subjected to stricter legal norms and constraints. The future development trends manifest in several aspects: firstly, the degree of legalization will continue to increase, with the state improving relevant laws and regulations to clarify the procedures and standards of administrative review to safeguard citizens' legitimate rights and interests. Secondly, judicial procedures will become more standardized, including the standardization of the acceptance, trial, and ruling procedures of administrative review cases to ensure procedural fairness, transparency, and efficiency[3]. Thirdly, the judicial safeguard mechanism will be further improved, including the establishment of a sound administrative review system and administrative court system, enhancing the judicialization level of administrative review, and strengthening supervision and management of ruling execution. Additionally, public participation will continue to increase, advocating for an open and transparent administrative review mechanism to safeguard the public's right to information, participation, and supervision, promoting the fairness and democracy of administrative review. Finally, China will actively participate in international cooperation, drawing lessons from and absorbing international advanced experiences to promote the enhancement of the level of judicialization of administrative review. Through the promotion of these trends, judicialization of administrative review will better serve legal construction, promote the protection of citizens' rights, and continuously improve the national governance system.

4. Reasons and Driving Forces of Judicialization of Administrative Review

4.1. Rule of Law Construction and Judicialization of Administrative Review

With the deepening of the rule of law concept and the needs of social progress, the construction of the rule of law has become an indispensable task for all countries. In this context, judicialization of administrative review, as an important component of legal construction, has significant reasons and driving forces. Firstly, the construction of the rule of law requires effective constraints and supervision of administrative power. Judicialization of administrative review can conduct rigorous scrutiny and rulings on administrative actions by introducing judicial procedures and legal principles, effectively restraining the abuse and improper conduct of administrative power, and enhancing the legality and fairness of administrative actions. Secondly, the construction of the rule

of law needs to safeguard citizens' legitimate rights and interests. Judicialization of administrative review emphasizes citizens' litigation rights and judicial protection, allowing citizens to appeal and adjudicate administrative actions through judicial means, safeguarding citizens' legitimate rights and ensuring they receive fair treatment. Furthermore, the construction of the rule of law requires the establishment of a fair, transparent, and efficient administrative review mechanism. Judicialization of administrative review makes the administrative review process more standardized, procedural, and legal, emphasizes procedural fairness and the legality of rulings, and provides a more stable and reliable judicial guarantee for administrative review. Finally, the construction of the rule of law necessitates the establishment of a sound legal system and judicial institutions[4].

5. Legal Basis and Institutional Safeguards of Judicialization of Administrative Review

5.1. Provisions of Laws and Regulations on the Judicialization of Administrative Review

The provisions of laws and regulations regarding the judicialization of administrative review are essential safeguards to ensure the legality, fairness, and effectiveness of the administrative review process. In terms of legal basis, laws and regulations typically specify the legal basis and scope of application of administrative review, providing a clear legal foundation for the judicialization of administrative review. Regarding judicial procedures, laws and regulations stipulate the judicial procedures of administrative review, including acceptance, trial, and rulings, to ensure the fairness, transparency, and legalization of the administrative review process. Additionally, laws and regulations may establish specialized administrative courts or administrative review institutions, clarifying the organizational structure, responsibilities, and personnel allocation of judicial institutions to provide organizational support for the judicialization of administrative review. Concerning ruling execution, laws and regulations specify the execution procedures and methods of administrative review rulings to ensure the legal effectiveness of rulings and the manner of enforcement, safeguarding the effective implementation of administrative review rulings[5]. Finally, laws and regulations may also stipulate the recourse and appeal procedures for citizens regarding administrative review rulings, safeguarding citizens' litigation rights and judicial protection, enhancing citizens' supervision and constraints on administrative actions. In summary, the provisions of laws and regulations on the judicialization of administrative review cover aspects such as legal basis, judicial procedures, judicial institutions, ruling execution, and legal safeguards, providing clear legal foundations and normative guidance for the judicialization of administrative review.

5.2. Judicial Safeguard Mechanism of Judicialization of Administrative Review

The judicial safeguard mechanism of the judicialization of administrative review is an important guarantee to ensure the fairness, transparency, and effectiveness of the administrative review process. Firstly, it includes the establishment of independent judicial institutions or administrative courts, which should possess independence and professionalism, responsible for the trial and ruling of administrative review cases to ensure the fairness and legality of administrative review rulings. Secondly, the involvement of judges is crucial, as independent representatives of judicial power, judges are responsible for reviewing the legality, reasonableness, and procedural legitimacy of administrative actions, safeguarding the legal effectiveness and authority of administrative review rulings. Additionally, the standardization of legal procedures is crucial, as strict legal procedures and judicial procedures can ensure the fairness, transparency, and legalization of the administrative review process, safeguarding citizens' litigation rights and judicial protection. At the same time, the judicial safeguard mechanism also includes provisions regarding the execution procedures and

methods of administrative review rulings to ensure the legal effectiveness of rulings and the manner of enforcement, safeguarding citizens' legitimate rights and interests effectively. Finally, public participation and supervision are also essential components of the judicial safeguard mechanism, encouraging public participation and supervision, advocating for an open and transparent administrative review mechanism, enhancing the fairness and democracy of administrative review. In summary, the judicial safeguard mechanism of the judicialization of administrative review provides important guarantees for the fairness, transparency, and effectiveness of administrative review, laying a solid foundation for legal construction and the protection of citizens' rights.

6. Impact and Evaluation of Judicialization of Administrative Review

The impact and evaluation of the judicialization of administrative review are multifaceted, with profound effects on government actions, social order, and citizens' rights and interests, triggering widespread discussions and evaluations. Firstly, the judicialization of administrative review enhances the legality and transparency of government actions. By introducing judicial procedures and legal standards, it strengthens supervision and constraints on administrative actions, ensuring that government actions comply with legal provisions and judicial standards, thereby improving the legality and credibility of government actions. Secondly, the judicialization of administrative review promotes the construction of the rule of law and social stability. Judicialization strengthens the implementation of the rule of law in the administrative field, enhances citizens' trust and reliance on the law, promotes social order stability, and the dissemination of the rule of law spirit. Furthermore, the judicialization of administrative review safeguards citizens' legitimate rights and judicial protection. Citizens can appeal and adjudicate administrative actions through judicial means, safeguarding citizens' litigation rights and judicial protection, enhancing citizens' supervision and constraints on administrative actions. However, the judicialization of administrative review also faces challenges and issues. Firstly, judicialization may increase pressure on judicial resources and the burden of judicial costs, resulting in insufficient efficiency and speed of administrative review rulings. Secondly, judicialization may increase the degree of legalization of administrative review, making the administrative review process cumbersome and complex, affecting administrative efficiency and the flexibility of government administrative decision-making. Finally, judicialization may trigger power struggles and conflicts between the administrative and judicial branches during the judicialization process, affecting the fairness and judicial effectiveness of administrative review. In summary, while the judicialization of administrative review is conducive to improving the legality and transparency of government actions, promoting the construction of the rule of law and social stability, it also faces challenges and issues. Continuous exploration and improvement of the mechanism and system of the judicialization of administrative review are needed in practice to better safeguard citizens' rights and promote social development.

7. Conclusion

In the discussion of the judicialization of administrative review, we have thoroughly analyzed the concept, connotation, as well as the historical evolution and development trends of the judicialization of administrative review at home and abroad. We have explored the role of the rule of law construction in promoting the judicialization of administrative review, as well as the relationship between the deficiencies in the administrative review system and the supplementation of judicialization. We have also discussed in detail the provisions of laws and regulations regarding the judicialization of administrative review, as well as the judicial safeguard mechanism of the judicialization of administrative review. Finally, we have analyzed the impact and evaluation of the judicialization of administrative review on government actions, social order, and citizens' rights and

interests. Through the research in this paper, we can draw the following conclusions: the judicialization of administrative review is an important part of modern legal construction, conducive to improving the legality and transparency of government actions, promoting the construction of the rule of law and social stability, safeguarding citizens' legitimate rights and judicial protection. However, the judicialization of administrative review also faces challenges and issues, including pressure on judicial resources, administrative efficiency issues, and conflicts between administrative and judicial powers. Therefore, continuous exploration and improvement of the mechanism and system of the judicialization of administrative review in practice are needed to better safeguard citizens' rights and promote social development.

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