

Research on the Application of the Decision System for Changes in the New Administrative Reconsideration Law

Chengzong Yang*

School of law, Anhui University of Finance and Economics, Bengbu, China

* Corresponding author: yangchengzong0719@126.com

Abstract

The newly revised Administrative Reconsideration Law officially came into effect on January 1st this year, providing legal support for the main channel of administrative reconsideration to resolve administrative disputes. The substantive resolution of administrative disputes is the logical starting point for the amendment of the Administrative Reconsideration Law, and the decision to change administrative reconsideration is of great significance for achieving substantive resolution of administrative disputes. The change decision is the most important form of substantive resolution of administrative disputes through administrative reconsideration. The new Administrative Reconsideration Law stipulates three types of administrative reconsideration change decisions: "inappropriate content correction type", "incorrect application of basis correction type", and "unclear facts and insufficient evidence correction type", and improves the prohibition of adverse changes. However, there are still many issues with the provisions of the new Administrative Reconsideration Law regarding changes in administrative reconsideration decisions, which need to be further improved. At the same time, it is necessary to establish and improve relevant supporting systems.

Keywords

Administrative litigation, Administrative reconsideration, Change decision, Substantive resolution of administrative disputes.

1. Introduction

Reforming and improving the administrative reconsideration system and mechanism has been a decision-making deployment of the Party and the state for many years. The newly revised Administrative Reconsideration Law will come into effect on January 1, 2024. This revision thoroughly implements the decision and deployment of the Party Central Committee on the reform of the administrative reconsideration system, fully activates the institutional function of administrative reconsideration, and provides institutional support for the role of administrative reconsideration as the main channel for resolving administrative disputes. Among them, the reconstruction of the administrative reconsideration decision system, which highlights the "primacy" of change decisions, is a major highlight and innovation. The Administrative Reconsideration Law adjusts the order of the types of decisions such as change, revocation, confirmation of illegality, and confirmation of invalidity, and clearly divides the scope of application of change and revocation decisions, with priority given to the application of change decisions to enhance the depth and strength of resolving administrative disputes through administrative reconsideration. Before and after the revision of the Administrative Reconsideration Law, the academic community began to pay more theoretical attention to the system of change decisions. Relevant papers mainly focused on exploring the requirements of substantive resolution of administrative disputes for the core positioning of change decisions,

the problems existing in the new law's change decision provisions, and suggestions for improving the supporting system[1]. However, there is a lack of overall delineation of the position of change decisions in the administrative reconsideration decision system. The new changes will determine whether the system can achieve the expected functions of legislators, and will become a key focus of follow-up observation after the implementation of the new law. This article aims to reveal the uniqueness of the function of China's change decision system based on comparative law research, clarify the division of labor and connection of change decisions in the administrative reconsideration decision system, explore the coherence of its normative structure, and thus look forward to its effectiveness and limitations in resolving administrative disputes.

2. Basic Principles of the Power of Administrative Reconsideration Organs to Change

2.1. The Legal Basis of the Administrative Reconsideration Authority's Power of Change

The laws and regulations related to administrative reconsideration give the reconsideration organ full power of change, which is granted for three reasons: in terms of the nature of the power, both the reconsideration organ and the administrative organ are exercising administrative power, and the superior administrative organ's leadership and supervision over the subordinate, as well as their professional level and the same job content in administrative management matters, lay the foundation for the reconsideration organ to supervise the administrative organ's discretion. In terms of authority, the review authority is basically the higher level of the respondent or the respondent itself, and the higher-level administrative authority has the right to conduct a comprehensive evaluation of the lower level. In terms of social demand, the functional mode of the Chinese government is changing, and it is necessary to establish a reasonable review mechanism[2].

2.2. The practical need for substantial resolution of administrative disputes

There are two interpretations of "substantive resolution of administrative disputes". One is that after the administrative dispute procedure is declared terminated, no new legal procedures are initiated; Secondly, in the administrative dispute procedure, the legal relationship of administrative entities has been substantially resolved.

Compared to decisions such as revoking remakes, the right to remedy changes in decisions is more efficient. The reconsideration authority, as the superior authority of the administrative authority that made the original administrative action or itself, can directly adjust the original administrative legal relationship by actively investigating the facts of the case and making a change decision, without the need for the original administrative authority to initiate administrative procedures again.

2.3. The essential attributes of the change decision

The essential attribute of the power of change of the reconsideration authority is administrative. There is a hierarchical leadership and supervision relationship between the reconsideration authority and the respondent within the reconsideration system, and there is no dispute over the division of power. The reconsideration authority does not need to have any concerns about the administrative authority's discretion.

3. The Functional Orientation of the Administrative Reconsideration Change Decision System

In 1999, the Administrative Reconsideration Law integrated the application of administrative reconsideration changes, revocation, and confirmation of illegal decisions. Article 28 (3) of the law stipulates that if a specific administrative action has one of the five situations, such as unclear main facts or insufficient evidence, it shall be decided to revoke, modify, or confirm that the specific administrative action is illegal. This legislative model does not distinguish the effectiveness of the three types of reconsideration decisions, and is referred to as a "chaotic structure" by scholars[3], which results in the reconsideration authority having complete decision-making power when encountering illegal administrative actions, weakening the uniqueness of the application of change decisions. Article 47 of the Implementation Regulations of the Administrative Reconsideration Law in 2007 specifically lists the situations where "changes can be decided upon", thereby separating change decisions from the aforementioned "chaotic structure" and highlighting the division of labor between change and revocation decisions: the former mainly applies to clearly inappropriate administrative actions, while the latter mainly applies to illegal administrative actions[4]. Through this, the Implementation Regulations of the Administrative Reconsideration Law provide clear guidance for strengthening the application of change decisions and enhancing the subjective initiative of the reconsideration organs. However, due to the fact that the Implementation Regulations of the Administrative Reconsideration Law are subordinate laws, Article 47 of the Regulation is an authorization clause for the reconsideration authority, and the actual effect of changing the decision has always been unclear. The system of change decision almost constitutes a dormant clause, which is not only constrained by factors such as the legal environment and the construction of administrative reconsideration capacity, but also stems from natural flaws in the system design.

In the process of revising the Administrative Reconsideration Law, the change decision system has always been a hot topic of widespread attention, from soliciting opinions draft to revising draft and revising draft three times. In the final revised and passed Administrative Reconsideration Law, the system of change decisions has undergone disruptive changes: firstly, in the administrative reconsideration decision system, the order of provisions that first stipulate the change, revocation, or partial revocation of decisions, and then stipulate the maintenance or rejection of decisions; The second is to clarify three applicable situations: inappropriate content, incorrect application basis, unclear facts, and insufficient evidence, thus establishing an independent scope of application for the change decision. Compared with relevant systems outside the country, China's change decision system has unique characteristics. The decision to change has risen from the last place of practical application to the first place at the normative level, which not only enhances the tension between the actual state and the expected state, but also embodies the legislators' vision and high expectations for the institutional function of the decision to change, mainly including the following two aspects of functional orientation.

3.1. Promote the role of administrative reconsideration as the main channel for resolving administrative disputes

This revision officially incorporates the "main channel role" proposed by the Party Central Committee into Article 1 of the Administrative Reconsideration Law, highlighting the positioning of administrative reconsideration in the mechanism for preventing, mediating, and resolving multiple conflicts and disputes. The "main channel" means that administrative reconsideration has a competitive advantage in absorbing administrative disputes compared to litigation, appeals, letters and visits, and can become the preferred way for parties to resolve

administrative disputes. Compared to administrative litigation, administrative reconsideration should be able to better form universal remedies and leverage its professional advantages in making accurate judgments on the legality and appropriateness of administrative actions[5]. As a main thread, the role of the main channel runs through the entire life cycle of administrative reconsideration and dispute resolution, and the change decision is reflected in both the trial and execution processes. For example, the scope of application of administrative litigation change judgments is narrow, limited to two situations: when the administrative penalty is clearly inappropriate and when the amount is indeed incorrect; The administrative reconsideration change decision is not limited to specific disputed subjects, achieving full coverage of the administrative action decision results, legal application, and factual determination, which can precisely form differentiated competition with administrative litigation. In the execution stage of the reconsideration decision, Article 78 of the Administrative Reconsideration Law authorizes the reconsideration authority to enforce the change decision or apply to the court for enforcement in accordance with the law. The reconsideration authority may allocate administrative resources at a high level through reasonable choices of enforcement methods and enforcement settlements to control the resolution process of administrative disputes. Consider the direction of "main channel role" is to innovate the system of changing decisions, attract applicants to choose administrative reconsideration channels with high-quality case handling, and try to resolve administrative disputes in the administrative reconsideration process.

3.2. Promote substantive resolution of administrative disputes through administrative reconsideration

Overall, in extraterritorial administrative reconsideration laws, the administrative reconsideration decision system focuses on revoking decisions for illegal or improper administrative actions; The change decision is subordinate to the revocation decision and only takes effect in specific circumstances, with certain limitations on its applicability. In Taiwan, a change decision exists as a special case for revoking a decision. If an administrative action is illegal or inappropriate, a change decision can only be made in specific circumstances. The main consideration for establishing the subsidiary status of the change decision is that in general, the reviewing agency should not replace the original administrative agency in making administrative actions, without emphasizing too much on the substantive resolution of administrative disputes. In China, the concept of substantive resolution of administrative disputes originated from the work requirements in the field of administrative litigation, and has now become a decisive factor in ensuring the role of the main channel for administrative reconsideration. The main channel of reconsideration plays a more declarative role, while substantive resolution of administrative disputes is a practical provision[6].

If a reconsideration decision is made to revoke and send back the application for reconsideration, it may trigger a new round of administrative reconsideration if the original administrative agency persists in its own opinion or makes a new decision that is more unfavorable to the applicant. The reconsideration authority itself has the authority to investigate and collect evidence. If a change decision is made directly, the process of rights relief can be shortened[7]. This is the institutional advantage of the change decision. If the revocation decision is mainly a judgment on the right and wrong of the original administrative act, focusing on maintaining the objective legal order, then the change decision is an adjustment to the content of the original administrative act, which can effectively respond to the applicant's rights and demands. Therefore, changing the "priority" of the decision implies a shift in the administrative reconsideration function from supervising administration to dispute resolution. Due to the direct impact of administrative reconsideration decisions on the outcome of dispute resolution, the reconsideration authority can only play a "filter" role in dispute resolution from

the "export" stage by substantively resolving administrative disputes in case practice, preventing unresolved disputes from flowing into other channels such as administrative litigation. Compared to revoking and ordering a new decision, changing a decision can directly alter the content of the administrative legal relationship, without the need for the original administrative agency to initiate administrative procedures again, in order to achieve remedies for citizens' rights[8]. In Japan, although there is controversy over whether the review authority can make a change decision in theory, based on the command and supervision power of the review authority in organizational law, the doubts in theory seem to have no practical significance. The reconsideration authority has administrative professional capabilities that courts do not possess. Through penetrating supervision, administrative disputes can be resolved in one go, achieving legal stability and procedural safeguards.

4. The Application Dilemma of the Administrative Reconsideration Change Decision System

Analyzing the data, the average change rate of administrative reconsideration decisions from 1999 to 2022 was 1.65%, and the application rate of change decisions remained low for a long time and showed a downward trend year by year (with a slight rebound in 2022). Even during the period with the highest application rate of change decisions (7.35% in 1999), the revocation rate of administrative reconsideration decisions was still 12.68% lower than that of the same year. In 2008, the change rate dropped by 1% for the first time and has been fluctuating around 0.38% for a long time since then. In 2009, the change rate was lower than the order fulfillment rate and the confirmed violation rate for the first time, and has been at the bottom of the application rate of all reconsideration decisions ever since. Examining individual local governments, even after comprehensively correcting 260 reconsideration cases for six consecutive years, there has been a phenomenon of never applying change decisions[9]. Objective data clearly indicates that the theoretical model of priority and broad applicability of change decisions has not been implemented in practice. The reasons for the formation of the above applicable dilemma can be analyzed from both subjective and objective perspectives.

4.1. The reconsideration authority finds it difficult to form a subjective willingness to apply the change decision

For a long time, administrative review agencies have subjectively lacked the willingness to apply change decisions, which is mainly due to two reasons. On the one hand, at the level of personal attributes. Compared to the power of revocation, the exercise of the power of change by the reconsideration authority will bear more administrative responsibilities. The exercise of revocation power by the reconsideration authority only requires a judgment on the effectiveness of the administrative action, but the nature of the change decision itself determines that the reconsideration authority should further adjust the illegal and improper administrative action to a legal and legitimate state. On the other hand, at the level of litigation rules. According to Article 26 of the Administrative Litigation Law, the reconsideration authority that changes the original administrative action shall independently bear the responsibility for responding to the lawsuit; When the reconsideration authority fails to act or makes a decision to uphold, they shall bear the contingent and joint litigation responsibilities respectively. From this, it can be seen that in the current defendant system, the exercise of the power of change by the reconsideration authority will face relatively heavier pressure to respond to lawsuits.

4.2. Lack of effective legislative guidance for the application of change decisions by reconsideration authorities

Firstly, apply the hierarchy level. In 2017, Article 28 of the Administrative Reconsideration Law adopted a mixed legislative model, which means that the content of paragraph 1, item 3 shall be jointly applied to the modification decision, revocation decision, and confirmation of illegal decision. Before the amendment, the review authority had full discretion over whether to apply the change decision.

Secondly, at the level of applicability. Looking at the research results in both theoretical and practical circles, it is generally believed that administrative actions that are based on errors and are deemed inappropriate have room for application of change decisions. However, there is no universal consensus on administrative actions with unclear main facts and insufficient evidence. To examine the applicability of change decisions in factual and evidential cases, the institutional norms before the amendment of the law pose at least three obstacles to the application of change decisions by reconsideration organs. From the perspective of the historical changes in the reform of this system, the regulatory framework has undergone two changes since the "Administrative Reconsideration Regulations", and four versions of reform plans have been passed in the process of amending the law. The complexity of the reform thinking behind the system has had an impact on the stability of legal application. Secondly, before the amendment, the Administrative Reconsideration Law established rules for the application of revocation decisions in factual and evidential cases, which to some extent limited the scope of application of change decisions. Thirdly, the Implementation Regulations of the Administrative Reconsideration Law and the Administrative Reconsideration Law adopt completely opposite views, explicitly retaining the possibility of applying change decisions in such cases. The inconsistency between low-level administrative regulations and authoritative interpretations by legislative bodies creates uncertainty in the application of change decisions to such cases, which to some extent affects the uniform application of change decisions in such cases.

Finally, at the level of applicable standards. This article systematically reviewed 238 typical cases published by the former State Council Legal Affairs Office and the Administrative Reconsideration Bureau of the Ministry of Justice, and found that in more than 30 years of administrative reconsideration trial practice, there is a dilemma of vague application standards for the change decision system. For example, in the cases of "Xiao disagrees with the non recognition of work-related injuries by a certain city's human resources and social security bureau" and "Cai disagrees with the recognition of work-related injuries by a certain city's human resources and social security bureau", the facts of the death or injury of the applicant's relatives have been established, and the focus of the dispute is whether the aforementioned facts are related to the cause of work. Although the decision made by the reconsideration authority was based on Article 14 of the Work Injury Insurance Regulations regarding the determination of work-related injuries or deemed work-related injuries, the final results of the Xiao and Cai cases were respectively revocation and an order to redo or modify the decision. For example, the cases of "Li's refusal to accept the administrative penalty decision of a certain city's public security bureau" and "Li's refusal to accept the administrative penalty decision of a certain quality and technical supervision bureau" both belong to situations where the administrative penalty is too light and too heavy, but the reconsideration organs have made decisions to revoke or change them respectively. The phenomenon of "different judgments for the same case" in practice reflects the dilemma of ambiguity in the application standards of change decisions.

5. The Improvement Path of the Decision System for Changes in the New Administrative Reconsideration Law

5.1. Accelerate the establishment of a specialized and professional team of administrative reconsideration personnel

The change decision plays an irreplaceable role in the substantive resolution of administrative disputes and is a significant feature of administrative reconsideration over administrative litigation. Its correct application relies heavily on the professional level and legal literacy of the reconsideration personnel. Article 2 of the Implementation Regulations emphasizes that administrative reconsideration organs should appoint full-time administrative reconsideration personnel, and Article 4 requires that full-time administrative reconsideration personnel should obtain corresponding qualifications, possess corresponding conduct, professional knowledge, and business capabilities. The Implementation Outline for Building a Rule of Law Government (2021-2025) also requires strengthening the professionalization and professionalization of the administrative reconsideration work team. Article 6 of the new Administrative Reconsideration Law once again emphasizes the construction of a specialized and professional team of administrative reconsideration personnel. Given the quasi judicial nature of administrative reconsideration personnel, the new Administrative Reconsideration Law also imposes strict requirements on their qualifications, requiring personnel who are engaged in reconsideration work for the first time in administrative reconsideration institutions to obtain legal professional qualifications, participate in pre service training, and also impose strict legal liability requirements on administrative reconsideration personnel. For a long time, the number of personnel handling administrative reconsideration cases has been insufficient, and most of them are concurrently held by staff from the internal legal department of the administrative reconsideration organs, resulting in a serious lack of professionalization and specialization among administrative reconsideration personnel. Due to the previous administrative reconsideration jurisdiction being a combination of sections and blocks, according to the new Administrative Reconsideration Law, except for exceptions such as vertical management agencies, administrative reconsideration will be subject to centralized jurisdiction. This situation will become more prominent under the new system. This requires administrative reconsideration organs at all levels to take practical measures in accordance with the requirements of the new Administrative Reconsideration Law, improve the professional level and legal literacy of administrative reconsideration personnel, strengthen the assessment and management of administrative reconsideration personnel, and accelerate the professionalization and professionalization of administrative reconsideration personnel[10].

5.2. Improve the system of publicizing administrative reconsideration decisions

The Implementation Outline for Building a Rule of Law Government (2021-2025) explicitly requires the comprehensive implementation of the online disclosure system for administrative reconsideration decisions. Article 79 of the new Administrative Reconsideration Law also provides for the disclosure of administrative reconsideration decisions. In view of the new Administrative Reconsideration Law's promotion of the status of reconsideration change decisions and the expansion of their application, especially the lack of review standards for "inappropriate content" of administrative actions in change decisions, and the differences in how to distinguish between "incorrect application basis" and "unclear facts and insufficient evidence" situations and "illegal application basis" and "unclear main facts and insufficient evidence" situations in revocation decisions, the disclosure of administrative reconsideration change decisions is of great significance for promoting the effective implementation of the

principle of fair and open administrative reconsideration. Given the nature of administrative reconsideration actions, the disclosure of administrative reconsideration decisions can be carried out in accordance with the Regulations on the Disclosure of Government Information.

5.3. Build an efficient and professional administrative reconsideration service system

Compared with general administrative actions, the administrative reconsideration system has comprehensive goals of rights relief, dispute resolution, and supervision of administration. Compared with administrative litigation, administrative reconsideration has the characteristics of efficient and convenient services, as well as the advantages and economies of scale of professionalism, technicality, management, and organization. Its influence can extend to various aspects of the construction of a rule of law government, playing a role in the source governance of "demands". Empowering administrative reconsideration through modern technology, comprehensively incorporating important procedures such as application, acceptance, review, decision, and execution into the intelligent reconsideration system. Establishing an efficient and professional administrative reconsideration service system can effectively extend the functions of administrative reconsideration and actively promote the governance of litigation sources.

The Implementation Outline for the Construction of a Rule of Law Government (2021-2025) proposes multiple measures to leverage the role of administrative reconsideration as the main channel for resolving administrative disputes. Among them, it explicitly states the construction task of "establishing a mechanism for supervising the execution of administrative reconsideration decisions, opinions, and recommendations, and achieving an organic combination of individual case supervision and error correction and forcing the rule of law in governance". In terms of individual cases where a change decision is made, the administrative reconsideration authority should use its own advantages to promptly explain the situation to the applicant, enhance the applicant's acceptability of the administrative reconsideration decision, and greatly reduce disputes from entering the administrative litigation process. In terms of preventing similar cases, administrative reconsideration organs should utilize the advantages of comprehensive case review and big data of reconsideration information, and promote the source governance of administrative disputes through the flexible use of mechanisms for the production, notification, and feedback of administrative reconsideration opinions and proposals.

6. Conclusion

The change decision system in the new Administrative Reconsideration Law includes three functional orientations, namely playing the role of the main channel for resolving administrative disputes, substantively resolving administrative disputes, and strengthening internal supervision based on administrative self-discipline. There is a qualitative difference between a change decision and a revocation decision in negating the effectiveness of the original administrative action; The change decision and partial revocation decision are respectively applicable to different processing results of the original administrative action; There are two factors to consider when choosing between a change decision and an order to redo the decision. The three applicable scenarios of change decisions present a pattern of increasing degree of illegality in administrative actions, and the expansion of the application space of change decisions should be promoted from three aspects: decision results, legal application, and factual determination. The principle of prohibiting adverse changes plays a "safety valve" role in the change decision system, and should avoid improper suppression of the priority application status of the change decision, allowing for the supplementary

application of the decision to reject the reconsideration application. Change decision centrism has begun to emerge, but its effectiveness still needs to be tested.

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