

An Analysis of the Institutional Arrangement on Administrative Justice

Dengjie LONG

Southwest University of Political Science and Law, Chongqing, 401120, CHINA

Abstract: Justice is reputed as the supreme value of legal proceeding. The fairness of legal proceedings lies on its structure, which includes the justice of proceeding and result, theoretically. There is no doubt that, the fairness of process means the justice of the program. Thus, as the key value of the law and institution, the justice of program should be applied to every lawsuit. To ensure the justice of the suit, we should embark on the institution, to push on legislation, and regulate the procedure.

Keywords: Administrative Proceeding; Fairness; Institutional Arrangement; Procedure Justice; Judicial Justice

1. Introduction

Fairness is the basis of justice, as well as the eternal goal of the judicial activity. The justice includes the fairness of both entity and procedure. The entity fairness lies on the result, and the procedure fairness lies on the process. The entity fairness has been the sole standard to measure the justice for a long time, the procedure will be of little necessity once the entity fairness is fulfilled. It's the truth that more stress has been laid on the procedure impartiality both in the world of academy and judicial practice. However, there seems to be clear distinctions between standard theory and priority theory of impartiality in the theoretical world. The entity partiality and procedure impartiality should be equally stress in the contemporary society ruled by the law. Only then can the real justice be fulfilled.

2. Analysis of Basic Theory

Impartiality is reputed as the supreme value of the legal proceeding. Litigation fairness lies on its structure and is theoretically regarded as to include two aspects that is, the impartiality of the process and result. Thus, as the key value of the law and institution, the justice of program should be applied to every lawsuit. We should set the procedure impartiality as the basis standard when making comments on the pro and con of the particular lawsuit and institution. The improvement of the amendment on the lawsuit and institution can be represented as the pursuit of procedure fairness sponsored by the legislative body and the political state. So far the administrative lawsuit is the oldest of the three main lawsuit, the law of criminal procedure and law of civil procedure have been amended by the legislature more than once. It doesn't mean the perfection of the administrative lawsuit, though haven't been amended. On the contrary, it has reached an agreement in the world of legal theory, judicial practice,

and the national level that it's of great necessity to amend the administrative pursuits. The author contends that it's a key way to amend the particular institution which may hamper the achievement of the procedure impartiality if we want to improve our administrative lawsuits in the future. The administrative behavior of the subject leads to the administrative proceeding. There will be no administrative proceeding sponsored by the future administrative counterpart disagreeable with the administrative conduct. A large number of administrative actions represented as the control, restriction, and punishment of the administrative counterpart. Thus in the system of administrative law, the legal status of the administrative subject and the administrative counterpart are not always in the equal state. The subject always lies in command, while the counterpart in counterpart. It's the necessity of the order maintenance system to ensure the advantage of the administrative power. It's also necessary to take the right relief of the counterpart into account, after the conduct is deeply shaped, which is the requirement of the democracy. The right only sponsored only by the internal review system can not avoid the condition that a judge might be the judge of himself, because it contradicts the basic principle. Thus the constitution of the relief system from the neutral third party to the administrative counterpart is of great importance and necessity. Such institution is the administrative system in the contemporary sense. The administrative proceeding should also set the procedure impartiality as the value pursuing. However, the administrative institution should be correspondingly designed in arrangement of the measure for achieving the procedure impartiality, due to the special character of the administrative conduct, the relation between administration and law, and the administrative power. If there's no difference between the designing of the special administrative proceeding and other lawsuits (such as the design of civil

lawsuits) the impartial value of the administrative proceeding will never be achieved. The author contends that there are some special institutions on legislation hindering the fulfillment of the procedure impartiality in the legislative arrangement of our special law and institution on administration.

The English world justice means impartiality, fairness, and righteousness in China. Pond said: "theoretically we can regard it as a kind of virtue or need of human beings or a kind of reasonable and equal satisfaction we need. Economically and politically, we can take the social justice as a kind of ideal institution, though which our benefits and wishes can be well guaranteed. In the field of law, the so called execution of justice(the execution of law) is to regulate the relations between people and arrange their behaviors through social laws in the organized society of politics. The contemporary authors on philosophy also contend it as a kind of ideal relation between people." J. Rawls an American philosopher contends: "The key issue of justice lies in the basic structure of the society, more exactly, the beneficial arrangement of social cooperation is determined by the rights and commitments of social institution arrangement." Bodenheimer contends: "if we talk about justice in the common term, we may say that, the justice stresses on how to have the order or social institution applied to the fulfillment of the basic tasks..... To satisfy the personal needs and requirements, to promote the development of production and the degree of social cohesion is indispensable to reserve a civilized living style. That is the goal of justice." Taking all the apprehension of justice into account, we can find its fundamental connotation: justice is referred to allocating the rights and benefits of the people in a reasonable style. It will be reckoned as right, if the process, style and result of allocation on the rights and benefits between people is reasonable, otherwise not. In fact, seeing from all of the views, there are just two standards, one is the social standard and the other the legal standard. What we discussed above is the social standards. The author contends that, the entity impartiality and the procedure impartiality are the two aspects of the legal standard in justice. The entity impartiality is law drafted by the governor. The populace governed by the law should be equally treated, without any discrimination. The law should be obeyed by every citizen, with no exception. They should not enjoy the right endowed by the law but fulfill the commitments fixed by it. All the legitimate rights and interests of the party should be protected and all of their illicit actions should be sanctioned.

3. Basic Connotation of Procedure Justice

The fulfillment of the entity impartiality should be ensured by the other aspect of the law, which is the procedure impartiality. The significance of the procedure impartiality in the administrative proceeding is fulfilled by

its content in the process of the activity. Thus it's necessary to have a basic understanding of the content, before the discussion of the significance in the administrative proceeding.

3.1. The Content of Procedural Fairness

The procedural fairness is also called the procedural justice. It's the special content of the procedure on morality. And what standard should the content of procedural fairness be, can it become the special morality and be reckoned as the fair procedure. The scholars both in and out of our country have had beneficial research about it, and come up with a number of valuable ideas.

3.2. The Significance of Procedural Fairness

According to the content of procedural fairness discussed above and the current condition of the administrative proceeding in our country, the author contends that, there will be several positive significance below if we set fairness as the value of the administrative proceedings.

- 1). It is helpful to solve the administrative disputes and alleviate the controversy between the governor and populace, which will contribute a stable society. It's the only goal for the process of administrative proceeding to solve the administrative disputes and safeguard the social order, and sticking to the fairness helps to solve not just end the disputes. On the one hand, the procedural fairness can ensure the fulfillment of the entity fairness, because it contributing to finding out the facts and using the law in a proper way. On the other hand, when the entity can not be fulfilled for some inadvertent causes, not all of the request can be effective. A patient hearing can make you feel comfortable. It is the soothing function of the procedural fairness that makes it irresistible for the people in disadvantage to resist the result of the procedure. The functional system for absorption of the dissatisfaction of the procedure can be called the effects of "being trapped on your own pit." The meaning of procedure lies on the alleviation of the discontent from the populace to the governor, whether a fair ruling can be got from the entity.
- 2). Setting the procedural fairness as the value of administrative proceeding provides an accurate operational interface for the judicial supervision. It can not prevent the happening of judicial offside and avoid the administration being replaced by justice but have the litigation itself adapted to the condition of the increasingly enlarged accepting cases. The passage and the enforcement of the law of executive accusation we begin to have the notion that the administration action should obey the legal procedure. The fairness of administrative procedure is indispensable for the censorship of the administrative conduct sponsored by the proceeding. It will be impossible to have a fair censorship, supervision, protection and restriction, without fair proceedings. Thus the choice of administrative procedure and administrative always go

together, at the basic value of fair procedure, the latter of which belongs to the final barricade for social relief with a more extensive standard than the former one. Besides, the trial of some new cases with higher professional and academic represented by the cases of liuyanwen, have triggered a discussion and thought in the legal field apart from the introduction and demonstration of the cases. They wondered that, how could the judicial censorship be involved in such cases. The commander, can be an expert on legal issues, but not in the academy and technology world. It's the truth that, the judicial censorship is moving toward the legal censorship, with procedure fairness as its center. It will be a trend for the development of the administrative proceeding.

3). the fair procedure can protect the commander, while restricting his action. The commander as in the leading of activity, all of the procedures are in the charge of him. Thus the judicial fairness is mainly determined by him rather than the party or others. To insist on fair standard, the commander must be loyal to the procedure, restrict his behaviors strictly, and do every regulation impartially. The strict restriction on the conduct and will can fold the commander with a sense of puritan, and it will make the trial a bit holy. Obviously, such institutional design, which can restrict the right and power is likely to restrict the criticism and denounce of the third party. It can make the commander be in a relatively moderate condition, which helps to alleviate his responsibility load while making a trial. At the same time, the insistence on the procedure fairness can help the commander avoid the outer interference, and make the commander out of damage when making a fair judge. It is of great importance at present, because the outer environment of the administrative proceeding is under improved.

It should be pointed out that, it's not the negation or rejection of the fairness we are stressing the significance of procedure fairness instead. The proceduralism sets the pursuit of entity fairness and procedure fairness as the ideal, which is reasonable and valuable. However, as to the author, setting new procedure the theoretical direction as the administrative design is very useful. (Adopting the new procedural opinions while legislating, taking full consideration of the instrumental value and independent value). If it is put into the special practice of administrative proceeding, it will be hard to accomplish. The reasons are as follows. On the one hand, on the established conditions, the judge should not have his referee function accomplished through any other work style, his pursuit of entity fairness can only be fulfilled by the development of procedure. That is to say, the judge will be the largest entity if he goes with the procedure strictly. On the other hand, there must be some conditions when the entity fairness and procedural fairness can't be fulfilled at the same time or even contracting each other, no matter how reasonable and scientific the procedure is, then the choice

of value has become a problem. It's certain that, our choices are certain to belong to the latter one. According to what we have discussed above, the author contends that, we can only set the procedural selfish departmentalism as procedural value in the judicial practice of administrative proceeding.

4. The Fulfillment of Procedural Fairness in the Administrative Proceeding

How can procedural fairness fulfilled in the administrative proceeding. Some scholars point out that, the procedural fairness can be fulfilled in two aspects: legislation and justice. The former one means that, the design of proceeding should be compatible with the goal of fairness. The common procedural fairness can be fulfilled if the legislator put the notion of fairness into the procedural regulation. The latter one means to apply the fair procedural regulation to the specific cases and conditions by motive judicial activities in the operation of case proceeding of judicial practice to fulfill the judicial justice. Here, the author will focus on how to put procedural fairness into practical issues of the administrative proceeding institution as a whole, the object of the proceeding will also be involved. The plaintiff to freedom will also be restricted by administrative proceeding in the following two aspects.

4.1. The Object of the Administrative Proceeding

According to the fifth amendments of administrative procedure law the people' court must have a censorship on the validity of the special administrative behavior when hearing the administrative cases. It clearly stated that, the object must be the validity of specific behaviors. The specific behavior goes relatively to the abstract behavior. It's not hard to distinguish the differences because the abstract behavior has been separated from the judicial censorship. The key of the issue lies on its validity. It's always hard to grasp the degree of abstract in practice though they have a clear idea about the censorship object in the administrative procedure law sometimes we may even go against the spirit regulated in the administrative law, and it also contradicts the requirements of fairness. The most standing behavior is to set the behavior of plaintiff as the censorship object, among which there are two common mistakes.

1). Set the behavior of plaintiff as the censorship object. The behavior of the defendant will be deemed to be reserved, if the behavior of plaintiff is thought to be illicit. The behavior of defendant is illicit if the behavior of plaintiff is affirmed. Obviously it is affected by the traditional convention that we should pay more heed on the entity and less on procedure. With the rapid development of the administrative proceeding in the last several years, such errors are being rejected by the court.

2). Though we have a clear idea to have a censorship for the administrative behavior of the defendant, we are always more likely to have the behavior of plaintiff as the censorship object, deliberately or carelessly, in specific practice. Such phenomena are caused by the following reasons. On the one hand, most of our administrative commanders are once in charge of criminal trial or civil trial, thus their old convention of trial is hard to change at a time. On the other hand, it's led by the weak awareness of the procedure and the lack of understanding of fairness value in administrative proceedings. In our country, the censorship of facts is included in the judicial censorship of administrative behaviors. Thus, practically the fact censorship, the fact censorship and procedural censorship are included in the validity censorship of administrative behavior. We are likely to be misled as the fact censorship goes on. We must have a clear idea that the fact to be censored here differs from that of the civil proceeding. It's the fact that censored through a certain administrative procedure by the administrative organ. It's the organ approved facts rather than the fact of plaintiff. The fact censorship is the process to approve the fact, thus we should make a reasonable censorship for the evidence of fact censorship, in accordance with the defendant. In other words, the sole aim of the fact censorship is to examine whether the same conclusion can be got from the administrative procedure and judicial procedure with the same evidence. Only in this way can the regulation of the administrative law be strictly applied to the censorship object, without deviation. Only in this way can the fair value be well implemented in the process of fact censorship.

4.2. The Restriction of Administrative on Plaintiff Prove Freedom

The system of evidence institution and evidence regulation is a large and complicated subject. It's beyond what can be researched in this thesis. Here, the author just has his idea on the procedural fairness issues of the regulations in the administrative proceedings. The special order for defendant to freedom has been regulated in the institution and practice of the current administrative proceeding, which represents the procedural fairness in a larger extent. However, the necessary regulations of restriction on the issue of plaintiff prove, especially on the plaintiff to freedom are not large enough. Some contends not to set too much restriction on the plaintiff prove, because they think that the administrative proceeding is in a late start, and the suit levels of the party are in a low degree. They stand in a decent position because they see the issue from the view of protecting the administrative proceeding. However, the author deems that, the opinion just views things in a short sight, because it's based on the loss of the administrative proceeding development in a long run. Seeing from the specific cases, the practice without any restriction on the plaintiff to freedom has some dis-

advantages. On the one hand, the evidence of the plaintiff in a large may be rejected, which will strike the confidence of the plaintiff directly. On the other hand, it may lead to the plaintiff in an unfair state, if he is allowed to provide evidence out of administrative procedure without any restriction, because no one can make the conclusion with seeing the evidence. Seeing from the fulfillment of the legal point, it not only helps to foster the lazy mood of the people towards right, and excessive dependence on justice. Just as the supreme court claim in a decision in 1946: "it's the function of usurping the administrative organ, if the decision is overruled according to the evidence never referred before. Because it deprived the opportunity to consider the issues, make decisions and justification." The brunt and damage to the realization of rule by law caused by the two aspects discussed can not be ignored.

5. Conclusion

Procedural fairness refers to the unique content of moral and ethical value of legal procedure. It is the prerequisite of entity justice. In the juridical practice of administrative proceedings, taking the procedural fairness of procedure departmentalism as the value orientation, on the one hand, is conducive to resolving administrative conflicts and easing the contradiction between government and people which is helpful to the social stable general situation. On the other hand, it provides a proper way for the judiciary to supervise administration mechanism, it is helpful to prevent judiciary offside and update the administrative proceedings to tap into the demands of the expanding scope of acceptance of administrative procedural law. Considering the characteristics of administrative actions, administrative law relations and executive power, the administrative litigation system should have corresponding designs to realize the value of procedural fairness, or the realization of procedural fairness will not come true in the administrative proceedings. We should focus on how the procedural fairness could be regarded as integral concept to be carried through the practical issues of administrative litigation system, so as to promote realization of procedural fairness in the administrative proceedings.

References

- [1] X. W. Zhang, "The Demands of Procedural Justice--Reflection on the System of Administrative Litigation," *Innovation*, 2012, 6(39).
- [2] W. L. Yang, "Administrative Justice: the Value Pursuit of Administrative Law," *Law and Society*, 2009:8.
- [3] X. J. Su, "On the Relationship between Procedural Justice and Substantive Justice," *Journal of Chongqing University of Science and Technology*, 2010, (15).
- [4] Z. Q. Wang, "On the Function of the Administrative Litigation in the Construction of Harmonious Society," *Research on Administrative Law*, 2009, (1).

-
- [5] H. Maurer (Germany) and Translated by W. Gao, "Administrative Law Introduction," Law Press Ltd., Beijing, 2000. [6] K. C. Davis and Translated by H.-H. Bi," Discretion Justice," Commercial Press Ltd., Beijing, 2009.

Subscriptions and Individual Articles:

User	Hard copy:
Institutional:	800 (HKD/year)
Individual:	500 (HKD/year)
Individual Article:	20 (HKD)