On the Administrative Litigation and Reconciliation System in China

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Abstract

With the development of our society, the object and scope of government’s administrative function are expanding day by day. Facing the complicated new situation, new problem and the enhancement of the rule of law, the difficulty of hearing the administrative case is increasing. This article mainly analyzes the present situation of the reconciliation of administrative litigation, discusses how to construct our country's administrative litigation reconciliation system, promote the administrative trial work smoothly, and better protect the legitimate rights and interests of the parties.

Keywords: administrative litigation reconciliation system legal norms

INTRODUCTION

Litigation mediation, also known as court mediation, refers to the trial court in the chair and coordination of the proceedings in the process of both sides. The parties voluntarily, on an equal footing, so as to reach a consensus to resolve the dispute to terminate the proceedings of a series of litigation activities. Litigation mediation includes civil mediation, mediation of criminal procedure and mediation of administrative litigation. This paper argues that the mediation of administrative litigation can be roughly defined as: in the administrative litigation process, as the administrative organ of the defendant and the third party as the plaintiff's administrative counterpart and interested third party, under the auspices of the court judges, based on the principle of voluntariness and legality, the rights and obligations of the administrative law in respect of the disputes between the parties, the statutory authority of the administrative organ of the defendant Fan. The mediation of administrative litigation is the inheritance and development of mediation of civil procedure and mediation of criminal lawsuit. In this case, Second, the nature and characteristics of administrative proceedings mediation. Administrative litigation mediation is essentially the main administrative body to resolve administrative disputes, the rights and obligations of public law as the subject of litigation. Consultation with the plaintiff 's administrative counterpart to arrive at a consensual process. On the one hand, administrative litigation mediation is a kind of litigation, the subject of litigation is the rights and obligations of public law, administrative mediation is equivalent to the court decision, can be used as a court to enforce. On the other hand, the two sides have a private right to the nature of the parties to the administrative law on the rights and obligations as the subject. Consultations are conducted to arrive at desirable results. Therefore, the administrative litigation
mediation has a dual nature, as the Japanese scholar Nanbo Fang said, "Administrative litigation mediation is a multi-party legal acts, not only litigation, but also the contractual acts of both parties.

Mostly mediation on matters of public law, with the nature of the so-called public law contract. The commonality lies in the following: First, both parties have the right to dispose of their rights and obligations (part of the subject involved in common litigation), which is the litigation of litigation and litigation. Secondly, both must be in accordance with the principles of voluntary consultation and lawfulness, which should be the voluntary outcome of the parties, including the willingness to initiate conciliation proceedings and the willingness to conciliate the content of the conciliation; the consensual content must be in accordance with the law, And shall not violate the national interests and public interests. Third, both are a kind of litigation activities, the court exercise of the national jurisdiction of the specific performance, there are strict legal procedures. Fourth, mediation with the same court decision Effectiveness, not only can terminate the proceedings, it is the court to start the enforcement of the legal basis for the procedure.

Administrative litigation is different from civil litigation, the biggest difference is that one party is always an administrative organ, so administrative v.

Mediation also has its own particularity. This is embodied in: First, the content of administrative proceedings mediation on the limit. administrative
The defendant party is always an administrative organ, the punishment is the executive power, is the national public power, must be strict
Limited to the statutory scope. The administrative organ may only accept mediation, alteration or revocation within its statutory discretion
The specific administrative action is not entitled to any administrative cases are arbitrary punishment of the right. Second, the administrative proceedings mediation
The status of the inequality of the parties. The party in administrative litigation is an administrative organ, the other is an ordinary natural person,
Legal persons or other organizations, the parties the strength of the difference between the larger, with natural inequality. Therefore, the administrative proceedings
The programming of the solution should pay more attention to the protection of the rights of the administrative relative. Third, the administrative litigation mediation more involved in national interests
Benefits and public interest. Administrative litigation is one of the parties to the administrative organs, administrative disputes are related to the specific administrative acts of the dispute,
To the rights and obligations of public law as the content, which involves the majority of national interests and public interests. Civil mediation and public law
Does not produce any contact, only private law significance. Fourthly, the court has strong supervision over the procedure and content of mediation in administrative litigation
. In administrative mediation, the court should try to resolve the administrative disputes, but also the specific administrative action
To review the proceedings of the proceedings, to review its content to confirm that the protection is weak Status of the executive counterparts rights and public interests.
Mediation system has its own shortcomings, of course, the administrative litigation mediation system is no exception. If the relative rights of the executive in the mediation
The process of being infringed, there should be a way of relief, is the so-called relief have the right. China's "Civil Procedure Law" section

Article 182 stipulates: "If the parties have submitted evidence of conciliation which has already occurred the legal effect, if the evidence proves that the mediation violates the voluntary principle or the content of the mediation agreement violates the law, the parties may apply for retrial." After review by the people's court, "Article 73 provides:" the parties have occurred in the legal effect of the administrative compensation mediation, evidence to prove that the mediation violation of the voluntary principle or the contents of the mediation agreement violates the law, can apply for retrial within 2 years. "Reference similar method

The author holds that if the parties - especially the administrative counterparts - consider that the signing of the mediation agreement is due to coercion, Deception or other involuntary causes or the contents thereof are in violation of the provisions of law, the parties concerned may, within 2 years, Please retrial the way to get the right relief. Combined with the characteristics of administrative litigation, the parties have two ways to bring a retrial: Is to apply for a retrial to the court, after review by the court that is in line with the statutory conditions of retrial should retrial; Second, apply to the Procuratorate Its protest to start the retrial procedure. At the same time, we must note that mediation is a voluntary consultation between the parties is the agreement of both sides,

Conclusion

Procuratorate to supervise the process of mediation, the general case can only be filed with the Procuratorate. This can contain the executive power of the executive, as far as possible so that the parties in the litigation strength of balanced, voluntary and fair consultation. If the administrative organs use their advantages to deceive, coerce the opponent or through other illegal acts to damage the rights of the opponent, or in exchange for the withdrawal of the public at the expense of the public interest, national interests, Procuratorate can take the initiative to protest. Therefore, the Administrative Procedure Law of the People's Republic of China should give the Procuratorate the right to protest the mediation of administrative litigation, and clearly stipulate the statutory conditions for the prosecution to protest the administrative litigation.

Reference