

Study on Legal Issues of Voluntary Standards in the Era of High-quality Development

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Abstract: In the era of high-quality development, optimizing the management of quality infrastructure is a necessary approach, and the importance of standardization system construction is self-evident. The current "Standardization Law" is a summary of the achievements of standard reform in recent years. It mainly follows the reform direction of market-oriented standard formulation, but at the level of legal system construction, there are still remnants of the old planned economic system. Corresponding to the practical level, it is manifested as the implicit mandatory situation when the voluntary standards are applied by enterprises. This study analyzes existing research and practice, reveals the problems in the implementation of voluntary standards, and puts forward relevant solutions. In order to improve the application effect of standards in practice, the independent status of voluntary standards should be clarified at the legislative level, and a diversified evaluation mechanism should be established at the practical level.

Keywords: Standardization Law; Voluntary Standards; Voluntariness

1. Introduction

In the context of China's economic transition to high-quality development, further improvement of the standardization system is of vital importance, and the construction of government standards is an important factor in the success or failure of the reform of government functions. Standards formulated by the government include mandatory national standards, voluntary national standards, industry standards, and local standards. Industry standards and local standards are voluntary standards. The landmark achievement of the standardization system

reform in the new era is the new standardization law issued in 2017. Its core is to enable the market to play a decisive role in resource allocation and better play the role of the government. The overall reform idea is: gradually narrow the scope of mandatory standards, develop towards "technical regulations"[1], optimize the voluntary standard system, promote its transition to public welfare standards within the scope of government responsibilities, and gradually reduce the number and scale of existing voluntary standards. Although the reform of mandatory standards has turned to the right direction, the independent status that voluntary standards should have in the system has not yet been truly achieved, and there are still problems to be solved at the practical level.

Although the government has gradually withdrawn from the dominant position of the entire standardization system at the explicit level, its practice of implicitly controlling the market through performance evaluation and other means has frequently occurred. This method has exceeded the voluntary nature of voluntary standards and is difficult to include in the case that voluntary standards can be mandatory under certain circumstances. It is an ultra vires behavior, and this behavior can even be explained in the existing legal system. Although the new law has established the reform direction for the government as a whole, some of its contents still have historical legacy from the planned economy period. If this residue is not eliminated, it will inevitably leave hidden dangers for the government to use this as an excuse to exceed its authority. Existing papers on government standards mostly focus on the study of the nature of mandatory standards and the analysis of issues in the formulation of recommended standards. There are few research papers on the status of voluntary standards themselves and related issues in their implementation. This article will observe the problems in the implementation of

existing voluntary standards from a practical perspective, and then introduce the voluntariness of voluntary standards at the academic level, analyze the institutional causes of the problems, and point out the deficiencies in the current legal texts. Finally, relevant suggestions are given to truly establish the independent status of voluntary standards, reduce the phenomenon of government invading the market field with public power in practice, and infringe on private rights, and promote the orderly and coordinated development of the market.

2. The Phenomenon of “Voluntariness in Name but Mandatory in Reality” When Implementing Voluntary Standards: Implicit Mandatory in Enterprise Assessment

Voluntary standards are positioned as one of the important government standards in the standardization system. Unlike mandatory standards that must be implemented, voluntary standards are encouraged by the state when applicable. The main purpose of the state in formulating this standard is to provide a basic reference for standards in production or to provide certain guidance for the industry. This encouragement still follows the principle of voluntariness and provides a safety net for enterprises to prevent the lack of standards during production, but enterprises can still give priority to the standards or group standards they have formulated themselves.

In standardization practice, voluntary standards are not fully applied by enterprises voluntarily as required by law, but there is a phenomenon of implicit mandatory application, which is mainly reflected in various government assessments of enterprises. Specifically, local governments use voluntary standards as a reference for extra points and evaluation in the quality credit rating or product quality rating of enterprises. The government's evaluation of enterprises is an important way for them to manage market order and a manifestation of their administrative power. Since the evaluation mechanism is formulated and implemented by public power, market players will use it as a baton to adjust their various behaviors in order to gain greater advantages in market competition and obtain more support and less supervision from the government. This leads to

the fact that although voluntary standards are meant to be adopted voluntarily, they implicitly force businesses to apply them. Only by using government-type voluntary standards rather than group standards and enterprise standards can they be extra points or evaluated, which in fact puts the former in priority over the latter two. For example, observing the existing assessment documents, the Inner Mongolia Autonomous Region and Anhui Province use the GB/T19000 enterprise quality management system certification as a bonus item for corporate ratings in the corporate credit quality grading classification(see DB15/T2875-2023 "Inner Mongolia Autonomous Region Local Standards: Enterprise Quality Credit Grading and Classification Guidelines", DB34/T2141-2020 "Anhui Province Local Standards: Enterprise Quality Credit Rating Evaluation and Classification"); Hangzhou City, Zhejiang Province applies GB/T22000 certification to companies producing food and other related products as a quality reputation factor assessment(see DB3301/T0297-2019 "Local Standards of Hangzhou, Zhejiang: Quality Credit Grading Management Specifications for Food-related Product Manufacturing Enterprises") ; Kunming City, Yunnan Province, uses voluntary national standards to regulate restaurant grades, food quality, scenic area divisions, tour guide grades, etc. in product manuals in the classification and assessment of travel agency product quality.(See DB5301/T87-2023 "Kunming Local Standards: Classification and Assessment of Quality Grades of Travel Agency Products".)

This approach not only undermines corporate autonomy and hinders the free development of the market, but also completely deviates from the voluntary principle of standards and is difficult to comply with at the legal level.

3. Analysis on the Legal Theory that Voluntary Standards Should be Applied Voluntarily

In addition to legal provisions, from a theoretical perspective, voluntary standards are difficult to be classified as mandatory. Standards refer to "a normative document that is formulated through consensus and approved by recognized organizations, used and reused in order to achieve the best order within a

certain scope." (Refer to the national standard GB/T2000.1-2002 implemented in 2003 for general terms and definitions of standardization and related activities). From the definition of standards, it can be seen that they need to be formulated through consensus, and are the product of autonomy and democratic consultation between the formulation subjects. Some scholars also classify "standards" including "command and control" rules as "social regulatory tools"[2]. As a technical support, standards have become soft laws parallel to hard laws, providing technical means for the implementation of technical regulations and other regulations. Technical standards can rationalize and index facts. The basis is to define facts with unified indicators judged by professional rationality [3]. Technical and scientific nature are the most significant features that distinguish standards from other norms [4]. Standards have general regulatory power only when they are cited or quoted by national public power or laws, providing the function of identifying facts. At this time, technical standards rise to legal norms, namely technical regulations, thus providing a basis for the government to conduct market management. From an international perspective, the formulation and implementation of standards are autonomous activities of relevant market entities and their groups, namely standardization organizations. After being cited by law and becoming mandatory, they will exit the autonomous system of standards. In summary, it can be seen that standards are mainly important normative tools for quality control in the production, service and other business activities of market entities. Their formulation and implementation are closely related to the marketization mechanism. They are technical specifications formulated and voluntarily implemented by autonomous organizations with the voluntary participation of non-governmental market entities in accordance with autonomy and democratic consultation mechanisms [5].

The departments that formulate voluntary standards are all state administrative organs. However, formulating standards is not the exercise of administrative power[6], but a way of participating in market autonomy. The application of voluntary standards is the result of the voluntary choice of enterprises. It is not

mandatory, and emphasizes "can be done" rather than "should be done". The normative objects of standards are mainly technology and human behavior in applying technology, which are different from the rights and obligations between people[7]. Standards do not generate rights, obligations and legal responsibilities. They follow the principle of "technical neutrality". The standard system is different from the legal system. There is no difference in implementation effectiveness due to the level of administrative power. The standards formulated by different subjects are only distinguished by technical professionalism. The use of standards is future-oriented. Only those that meet the actual needs of the economy, society and marketization are good standards. In this formulation process, it is necessary to have an accurate understanding of the development trends of standards in order to make forward-looking judgments. Since the government is far away from the production and sales front line, it is difficult to respond quickly to market trends. The advancement of its formulation of standards may not be as good as market-type standards. Therefore, the government focuses on basics, and the market tends to be innovative. In the final application, enterprises voluntarily choose which standards as the leading standards within the enterprise according to their own positioning and establish their own standardization system. The standards in the system are hierarchical, and the standards in each link play a role in restraining each other. Their correct implementation is mutually reinforcing [8]. This relationship is based only on the principles of standardization, simplification, unification and ordering. This grading is also for the purpose of achieving scale in better production and has nothing to do with whether the standard setter has higher authority.

As the main body of formulating voluntary standards, the government is different from market entities in that its organization naturally has a certain administrative nature. The main purpose of formulating voluntary standards is to safeguard public interests and overcome possible market restrictions, elimination of competition and other disadvantages. When formulating standards, coordination needs to be carried out nationwide or locally. Therefore, the government must fully consider regional

differences and the systematic nature of standards at all levels, and fully balance the interests of all parties. According to Article 15 of the Standardization Law, Article 16, when formulating standards, a standardization technical committee composed of relevant parties should be organized to conduct investigations based on actual needs and demonstrate and evaluate the necessity and feasibility of formulating standards; during the formulation process, various methods should be used to solicit information in a convenient and effective manner, organize the investigation, analysis, experiment and demonstration of standard related matters, and achieve coordination and supporting among relevant standards. Compared with the market, the government can concentrate its efforts and gather experts and scholars from all walks of life. It has rich standardization resources and sufficient standardization capabilities. It can have an overview of the entire economic life, understand the overall situation and organize, ensuring the basic functions of standards to the greatest extent, and assist its administrative management activities to a certain extent by formulating standards. When the government formulates standards, it needs to conduct a comprehensive review of the formulation process. This kind of behavior has more formal advantages and control over market entities than market entities. But in essence, this advantage does not equal legal privileges. The overall planning and organizational power here is only to unify the technical solutions, with the intention of making the standard text more reasonable and adaptable to the needs of social development, and supporting the entire standard system. It provides basic guarantee and a certain degree of leadership. This kind of effect is the effect in technical application. It only has the normative nature at the technical level rather than at the level of legal and administrative documents. The public welfare of governmental standards is not directly equivalent to the mandatory application. In fact, there are also many public interests in private law, for example, public interests are usually factors that affect the validity of legal acts, and legal norms related to ethics such as family law are closely related to public interests [9]. The behavior of the government is still market behavior, not administrative behavior.

From the above, it can be seen that although voluntary standards are formulated by the government, this formulation is still a market behavior. Enterprises should apply voluntary standards independently according to their needs which should not be influenced by public power. Forcing enterprises to apply them violates the nature of the standards at the legal level. However, there are reasons for the occurrence of this phenomenon, which is closely related to the old standardization system in my country's planned economy era.

4. Institutional Causes of the Implicit Coercion Phenomenon: Historical Remnants of the Old Standardization System

The fact that voluntary standards are mandatory in implementation is not only because the formulation subject itself has public power, but also has an important relationship with the fact that they did not have an independent status when they were created in my country's standardization system. My country's first promulgated "Standardization Law" in 1988 was the product of the transition from a planned economy to a market economy. Although the role of the market was emphasized at that time: the government-made standards were divided into two levels: mandatory and voluntary, and a system of enterprise standard filing and encouragement of the adoption of international standards was established, it was still a government-led model in general. Mandatory standards at all levels were paired with voluntary standards, and the two had a strong internal relationship. Although the voluntary standards were named as voluntariness, they had become vassals of mandatory standards in actual application, and it was difficult to reflect their independence as voluntary standards. The government's coercive power was inevitably revealed at both the formulation and implementation levels and penetrated into the market. Under the standardization system at that time, standards were mainly manifested as a means for the government to govern the market and implement the national quality policy. The mandatory nature of the government as the subject of standard formulation was beyond dispute both in academia and in practice. However, with the in-depth development of the economic system, the standardization

system has also been further improved. The 2017 "Standardization Law" is a summary of the reform achievements. This reform has completely changed the previous government-led pattern, and the market is the decisive force of the entire system, allowing the invisible hands of the market to dominate resource allocation, and return to the principle of voluntary standards with the idea of "government standards focus on ensuring the basics, and market standards focus on improving competitiveness". The standardization system has shifted to marketization as a whole, and the mandatory attributes have been greatly reduced. The "government-type standards" and "market-type standards" are operated in a dual-track system. The standardization system in the new era has been in line with international standards, is more scientific and reasonable, and fits the nature of the standards themselves, but it is worth noting that while the overall trend is positive, there are still certain flaws, and the new law still has certain remnants of the old era in the legal system.

5. The Historical Remnants of the Old Standardization System are Reflected in the Voluntary Standard Provisions of the Standardization Law

As for the voluntary national standards, which are one of the voluntary standards, the terminology and positioning of the new law still bear the historical remnants of the old era, which poses certain challenges to maintaining the independence of the voluntary standards. According to Article 11 of the "Standardization Law", it is defined as "for technical requirements that meet the basic general needs, match with the mandatory national standards, and play a leading role in relevant industries, voluntary national standards can be formulated." It can be seen from this that, the primary purpose of formulating voluntary national standards is to meet basic general needs, the secondary purpose is to play a leading role in the industry, and is positioned as "matching" with mandatory standards, while observing the definitions of other standards, Article 12 stipulates "For technical requirements that do not have voluntary national standards and need to be unified within a certain industry across the country, industry standards can be

formulated. "Industry standards are those that are formulated in specific fields where there are no voluntary national standards but still need to be unified within the industry." As a supplement to voluntary national standards, they must also meet the purpose of voluntary national standards, that is, as basic general technical documents, they also need to be matched with mandatory national standards. When it comes to the definition of local standards in Article 13: "Local standards may be developed for special technical requirements that meet local natural conditions and customs, among others. "The formulation of local standards requires additional special requirements in local areas, which are special technical requirements. According to the interpretation method of system interpretation, special standards are based on general standards and are logically subordinate to general standards. Special standards are only adopted when special standards are different from general standards or have specific refinements. Therefore, local standards still need to follow the "two purposes" and "one positioning" of voluntary national standards in the general direction, it can be seen that the definition of voluntary national standards plays a leading role in the entire recommended standards, and vague positioning will cause significant damage to the entire government-type voluntary standard system. Compared with group standards, Article 18 states that "The state encourages academic societies, associations, chambers of commerce, federations, industry technology alliances, and other social groups to coordinate relevant market participants in jointly developing group standards meeting the needs of markets and innovation", the purpose of formulating group standards is to meet market needs and innovation, and the relationship with government departments is regulated, guided and supervised. It can be seen that the law greatly encourages the voluntary nature of group standards. Compared with the "matching" of voluntary national standards with mandatory standards, the wording of voluntary standards still retains the residue of the past planned economic system, and it is very likely to be understood as an accessory to mandatory standards and is still subject to the mandatory influence of mandatory standards. Voluntary standards need to stipulate basic

standard fields, so legislation gives them certain advantages in management. However, this management advantage does not mean that they can be enforced in execution. The compulsory nature of mandatory standards must be fixed in its own field and cannot have "spillover effects" due to "matching", and their mandatory spillovers cannot be taken over by voluntary standards. Voluntary standards match mandatory standards based on the convenience of performing duties, not compliance in terms of implementation effectiveness. Whether they can ultimately be implemented requires market entities to make voluntary choices, and the government cannot use "matching" as an excuse to enforce things. Whether it can ultimately be implemented requires the voluntary choice of market entities. The government cannot use "match" as an excuse to force the enterprises to apply. It must comply with the "voluntariness" nature of voluntary standards under the market economy system and cannot impose force on the enterprises.

As long as a technical solution is sufficiently scientific and excellent, is appropriate within the scope of use, and can be included in the quality evaluation mechanism regarding market conditions established by the government for market management, it cannot exclude market entities applicable, it should not be mandatory to use voluntary standards for evaluation. Market standards such as group standards and enterprise standards are equal in status to voluntary standards, and group standards are even more adaptable to market development. Group standards more flexibly respond to the forefront of market demands in the technical field. They play two functions to some extent. One is to reflect market needs in a timely manner and make up for the gaps in voluntary standards; Second, when recommended standards exist at the same time, the quality of the standards may be better than the recommended standards, and they have more flexible capabilities and coordination mechanisms to unify technical solutions. If the government insists on introducing the voluntary standards, it develops into the market in an implicit and mandatory manner, interfering with the opportunities for market entities to choose other excellent standards, it may be suspected of government monopoly, resulting in a dominant government-type

voluntary standard in the market, which will seriously affect the market. Turning back the clock on history and suppressing market vitality is inconsistent with my country's economic reform, which emphasizes "delegation, regulation, and services" of government functions and the market's dominant role in resource allocation. It is also contrary to the direction of the entire international economic development.

With the development of the economy and society and the need to keep pace with the international community, the rule of law in China's government supply standards is undergoing a transformation from a single administrative management system to a diversified social governance system. China's rule of law construction concept is also transitioning from strict legalism to the realization of the rule of law construction of the country, government, and society [10]. With the change of the background of the times, the new standardization law must be improved at all levels to better meet the market economic order of high-quality development in the new era.

6. Conclusions

The technical content of voluntary standards is based on basic principles and is guided by public interests. It seeks to enable all stakeholders on the implementation side to achieve the "optimal order". The wording of the legislative text must be extremely cautious, and its internal appropriateness and logical comprehensiveness must be carefully considered to avoid leaving loopholes that can be interpreted in the direction of mandatory standards. It is recommended to delete the words "match with mandatory standards" to prevent the competent authorities from using this as a basis to make it an appendage of mandatory standards, depriving the independence of voluntary standards.

The legal standard implementation system requires a set of mutually restrictive and complementary systems. The supporting documents in the standardization system must also be consistent with this. There should not be a situation where the types of voluntary standards exceed the scope of public welfare and the formulation requirements are too high and exceed the basic guarantee. Regarding the problem that the government adopts the

evaluation method to make the voluntary standards mandatory in disguise, the scope and types of application of the voluntary standards cited and evaluated in the enterprise credit and product evaluation in various parts of the country are different. This scope should be strictly limited to minimize the relevant application. If necessary, only reference bonus points can be set for infrastructure construction, basic public services, social governance and other aspects. A diversified evaluation mechanism should be introduced to increase the bonus points for the application of group standards and independently formulated enterprise standards. When formulating the evaluation mechanism, scientific and reasonable principles should be followed, and market supply and demand information should be fully considered. In short, from formulation to implementation, the independent status of voluntary standards must be strengthened and the principle of voluntary application must be upheld. As the subject of government supply standard formulation, the government needs to clarify its identity, retreat to a guiding position, keep the basic orientation, give full play to the market energy, and strive to achieve modern high-quality development.

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