Difficulties and Ways Out for Administrative Reconsideration Organs as Joint Defendants

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Abstract: After the amendment of the Administrative Procedure Law in 2014, the practice of "only the original administrative organ shall be the defendant in the case of reconsideration and maintenance of the decision" was changed to "the reconsideration organ shall be the co-defendant". After the amendment of this legislation, the effect of reducing the rate of maintenance of reconsideration decisions and the rate of retrial has indeed been achieved, so as to urge the reconsideration organs to actively perform their duties. However, it will then be found that this practice has made the reconsideration organ face two major difficulties, namely, realistic pressure and institutional contradictions, which reveal the irrationality of the co-defendant rule. The reason is that the reconsideration organ as a co-defendant is based on administrative logic, but its correct positioning should be quasi judicial. Therefore, in terms of seeking a way out, the reconsideration organ shall fully respond to the lawsuit at the stage of occurrence first, and then propose to rebuild the mechanism on the premise that the reconsideration organ is not suitable for being a co-defendant, and point out that the purpose within the administrative law system can also be achieved through improvement or establishment of other means, so as to explore a way out for solving the dilemma.

Keywords: The Reconsideration Organ; Administrative Reconsideration; Reconsideration and Maintenance; Co-defendants; Administrative Proceedings

1. Introduction

In 2014, the rules for the use of defendants in administrative reconsideration cases have changed. In response to this change, Professor Jiang Mingan considers it a favorable innovation[1]: the provisions of the "Original Administrative Procedure Law" have caused many reconsideration organs to act as the "maintenance meeting" of the original administrative act in order to avoid being defendants. After the administrative counterpart applies to him for reconsideration, whether the corresponding administrative act is legal or infringes upon the legitimate rights and interests of the counterpart, he will maintain the matter, so that the counterpart can not obtain relief for his infringed rights and interests through reconsideration, but has wasted much time and energy. "One of the reasons is that in practice, the higher authorities mostly hear cases symbolically and then make decisions in order to evade their own participation in litigation, which does not maximize the goal of formulating the reconsideration law. From the data of the maintenance rate and revocation rate of reconsideration cases over the years, the amendment of the law has indeed served to cure the "illness" of omission behind the decision of the reconsideration organ to "maintain", thus forcing the administrative reconsideration organ to act actively and perform its administrative duties on its own initiative. However, it cannot be ignored that it is precisely because the reconsideration organ is made a co-defendant that it also faces the test of crisis - institutional difficulties (such as conflicts with the characteristics of the co-defendant system and the right of disposition in violation of the free will of the parties) and realistic difficulties (such as increased pressure on administrative organs, increased cost burden and weakened credibility). It can be said that the reconsideration organ as a co-defendant is a dose of "effective medicine" for omission, but it is not the best "good medicine".

Whether the administrative reconsideration organ should be a co-defendant or not, the main reason for the differences is that people have different theoretical and logical understanding of the problem. Some scholars think that the reconsideration organ should be a co-defendant, which is based on the administrative nature of

the reconsideration act and holds a theoretical attitude of "secondary decision" to the making of the reconsideration decision; Some scholars think that the reconsideration organ is not suitable for being the defendant, but they prefer to judge the reconsideration decision as quasi judicial[2].

Therefore, in the face of the opportunity for the amendment of the Administrative Reconsideration Law in the future, the article clarifies the difficulties it will face when entering the litigation procedure, thoroughly locates the theoretical logic contained in the reconsideration decision, obtains the result of its view that it is not suitable to be the defendant in the current period, and appeals to the administrative organs at the current stage to find a good self-identity to fully respond to the lawsuit, change the defendant rules in time, understand other paths, and find a way out of the dilemma.

2. Legislative Considerations: the Significance and Characteristics of the Amendment of "Administrative Reconsideration Organs as co-defendants"

2.1 The Administrative Reconsideration Organ Presents Positive Significance as a Co-defendant

The original intention of the design of the provisions on the reconsideration organ as a co-defendant is to enable the reconsideration organ to gradually complete the transformation from passive performance of duties by "omission" to positive due diligence by "act", and to explain whether the reconsideration organ has fully fulfilled its due obligations and whether it has the enthusiasm to fully investigate the facts in the reconsideration procedure, which can be obtained through the analysis of the proportion of the maintenance, alteration and revocation of the final reconsideration results made in its trial to the national reconsideration results in that year.

From the analysis of the data on the maintenance rate in the national reconsideration results(Taking 2014 as the boundary, the maintenance rate in 2011 was 59.18%, in 2012 was 57. 66%, and in 2013 was 55. 84%; in 2014 it was 59. 73%, in 2015 it was 54. 59%, in 2016 it was 48. 48%, in 2017 it was 50. 89%, in 2018 it was 50. 8%, in 2019 it was 50. 62%, in 2020 it was 49. 99%, and in 2021 it was 48. 25%. Source: "Statistics on National Administrative Reconsideration and Administrative Response Cases" published by the Ministry of Justice over the years.), it can be summarized that the maintenance rate of reconsideration fluctuated between 55% and 60% from 2011 to 2014, and reached the highest maintenance rate in 2014 in recent years; Taking 2014 as the boundary, the maintenance rate of reconsideration fluctuates between 50% and 55% from 2014 to 2019, and in 2016, it reached the lowest maintenance rate in these years, falling below 50%. It can be said that the maintenance rate of the reconsideration organ showed a downward trend from 2011 to 2019 on the macro level, and although there was a slight increase in the middle years, it did not affect the overall trend; The data for the next two years show that the maintenance rate of the reconsideration result is below 50%. Therefore, the objective analysis of the data has indeed played a certain degree of dissuasion effect on the reconsideration organ from making a decision "according to the book", which in turn promotes the making of other trial results such as revocation or alteration.

The above view can also be positively verified by the revocation rate(Taking 2014 as the boundary, the cancellation rate in 2011 was 5. 82%, 5. 76% in 2012 and 5. 13% in 2013; 5. 22% in 2014, 7. 95% in 2015, 10. 58% in 2016, 9. 29% in 2017, 9. 91% in 2018, 10. 86% in 2019, 10% in 2020 and 8. 43% in 2021. Source: the same as above.): before 2014, the proportion of revocation cases in the trial results of national reconsideration cases was about 5%, but after 2014, the revocation rate remained at more than 7.5%, reaching the highest level in 2016, exceeding 10%, which shows that the reconsideration organ has been actively performing its reconsideration duties prescribed by law, showing the positive value of the rule. In light of the background of comprehensively advancing the rule of law in China over the years, Especially in 2016, as a key year of national governance, one of the highlights of the construction of a rule of law government is to formulate a list of government powers and responsibilities, increase administrative accountability, and seize the key point of the person in charge of the work in the rectification work, so that the reconsideration personnel are not only afraid to do nothing about their duties, but also dare not act arbitrarily, and many factors jointly promote the upward operation of

the reconsideration work[3].

2.2 Implications of Administrative Reconsideration Organs as Joint Defendants with Chinese Characteristics

In the long history of human culture, based on the differences in content and form, two major legal systems, the continental legal system and the common law legal system, emerged. As one of the products of modern democratic political and economic development, administrative reconsideration legal systems in various countries have their own local color to a certain extent due to different development conditions. As a matter of fact, we cannot find the same legal provisions as "the reconsideration organ as a co-defendant" in our country from the legislation and research of foreign countries, but we can explore the similarity of the administrative reconsideration mechanisms of various countries by analyzing the status quo of the relevant administrative reconsideration systems in foreign countries.

2.2.1 Contents of the reconsideration system in different jurisdictions

For example, the administrative law judge system, the cornerstone of resolving administrative disputes in the United States, is a unique system of its own. Administrative judges, like judicial judges, maintain a neutral, fair and impartial status to make reconsideration decisions, and determine whether reconsideration is a supervisory framework or a neutral adjudicative framework, which is an important decision factor for reconsideration organs to be defendants; Including but not limited to the design of the reconsideration system under the above different jurisdictions, we can only say that there are similarities with our system in one or some aspects, not exactly the same, which reflects the unique design of "reconsideration organs as co-defendants" in China.

Although the administrative reconsideration system exists in different jurisdictions, there are also commonalities in the handling methods, such as in some cases, the organ that originally made the administrative act is the defendant alone. Therefore, we can also follow the trend of the times, steadily promote administrative work and provide a new design path for the follow-up improvement of China's administrative reconsideration mechanism by clearly understanding the "essence" part of the contents of extraterritorial reconsideration, keeping firm confidence in China's road[4].

2.2.2 The choice of "administrative reconsideration organ as co-defendant"

The disputes over whether the administrative reconsideration organ should be a co-defendant are endless, and it is even more difficult for legislators to make a choice. However, the Administrative Procedure Law has finally created the so-called "double defendant" system [5]. And in practice, it has been proved that "the system of basically determining that the reconsideration organ is a co-defendant is positive in effect and promotes the play of the dispute settlement function of administrative reconsideration"[6]. The original provision stipulates that the principle of setting up the reconsideration organ to maintain the prosecution is "single defendant", which fundamentally denies the right of the counterpart as the plaintiff to bring a lawsuit against the newly made decision to maintain the reconsideration and the reconsideration organ as the defendant. Then why, before the legislative amendment in 2014, did China's legislature think that the reconsideration organ should not be the defendant under the maintenance situation?

To put it simply, there are two reasons: one is that even if it is a new reconsideration decision, the decision is made only as if it were repeated, which can only speak of the effect of confirming the validity of the original administrative decision, does not reverse the "true color" of the act, does not impose new burdens or add new interests on the counterpart, and plays the authoritative influence of restricting the counterpart's behavior; Second, it is considered that the problems to be solved by the parties are caused by the original administrative organ, so bringing a lawsuit against the original specific administrative act can fundamentally solve the problems of the parties, and there is no need to bring a lawsuit against the reconsideration organ. There are obvious loopholes in this provision in 2014. In administrative practice, the reconsideration organ evades the "disgrace" of sitting on the bench, makes irresponsible superficial remarks, directly defines and maintains illegal or improper administrative acts, perfunctorily completes the reconsideration procedure, fails to really play the due role of the reconsideration procedure, and makes citizens have the idea of "colluding with each other"

among government organs, which greatly dampens the sunshine "appearance" of government organs and destroys positive reputation.

In China, administrative reconsideration organs are institutionalized as co-defendants in the form of legislation, but there are still different concepts of reservation and abolition. One concept is the reservation theory, and most scholars who hold the rule of reserving the reconsideration organ as a co-defendant have established its positive role. Like the legislative consideration at the time of amendment, the reduction of the maintenance rate of reconsideration and the increase of the change and revocation rate reflect that the reconsideration organ has fulfilled its duties and has a certain degree of sufficiency in performance, which is also very consistent with one of the legislative purposes of the Administrative Reconsideration Law, that is, to protect the legitimate rights and interests of the counterpart. Therefore, the existence of the co-defendant system is reasonable and meaningful; The other concept is the theory of repeal, and most scholars who hold the view of repealing the rule have seen the test they are facing at present, which mainly supports and expresses their disapproval from two aspects: the superficial crisis (the realistic imbalance of benefits and costs, the contradiction with other coexistence systems) and the deep logic (the wrong understanding of the theoretical nature), so as to draw the conclusion that the reconsideration organ is not suitable to be a co-defendant. The following will be explained one by one from the above aspects.

3. Crisis Test: the Reality and Institutional Dilemma of "Administrative Reconsideration Organs as Co-defendants"

3.1 Practical Dilemma: Multiple Crises of Efficiency, Cost and Credibility

3.1.1 Difficulty 1: increased pressure and reduced efficiency of administrative organs

There are no reconsideration organs specially responding to lawsuits in China. These organs are essentially general administrative organs that perform administrative duties. They can only be called reconsideration organs when they enter the reconsideration procedure and assume specific reconsideration functions at a certain time, not to mention their professionalism. They will affect their normal performance of work when they change their status from general organs to reconsideration organs due to specific circumstances, resulting in increased pressure and inability to take into account the normal original administrative work, thus making the work inefficient due to lack of separation and skills, resulting in minor omissions or even more errors. The reconsideration organ is not a machine with fixed procedures, and the existence of complicated administrative relations behind it often consumes personnel's energy and time, resulting in a normal dilemma in practice - the reconsideration organ hovers in court and on the way to the respondent court, which well explains the current situation faced by the reconsideration organ as a co-defendant.

3.1.2 Difficulty 2: Increased cost burden of administrative reconsideration organs or counterparts

The procedure of administrative litigation is strict and complete, and such a procedure requires special personnel to respond to the lawsuit and reply. Every time the reconsideration organ makes a decision to maintain it, if the counterpart refuses to accept it and sues, it will need to bear the potential burden of participating in the administrative litigation as a co-defendant, that is, inevitably spending a lot of manpower and time participating in the litigation. In accordance with the provisions on jurisdiction under the current Administrative Procedure Law of China(Paragraph 1 of Article 18 of the Administrative Procedure Law of the People's Republic of China: Administrative cases shall be under the jurisdiction of the people's court of the place where the administrative organ that originally made the administrative act is located. Reconsidered cases may also be under the jurisdiction of the people's court of the place where the reconsideration organ is located.), the place where the original administrative organ is located or the place where the reconsideration organ is located may be selected after reconsideration and maintenance.

For example, when an administrative subject makes an administrative decision, the counterpart refuses to accept the decision, and still refuses to accept the decision after a department, as a reconsideration organ, makes a reconsideration and maintenance decision, and carries out administrative litigation. If the citizen chooses the court of the place of origin

for jurisdiction, the reconsideration personnel, as part of the parties, must go to the place chosen by the citizen to respond to the lawsuit; Conversely, when the applicant for reconsideration chooses to bring a suit in the court of the place where a department is located, he or she also needs to respond to the suit locally. Due to the vast territory of our country, no matter where we choose to prosecute, it goes without saying that there is always one party who needs to "pay" for the time spent and the cost of transportation; In addition, the reconsideration organ, as a co-defendant, will upgrade the contradictions between the two parties that could have been resolved at the grass-roots level to an administrative level to resolve disputes, and even more to a higher level for internal examination by organs and departments. For some actual disputes, the settlement is an unnecessary operation path. Therefore, from the perspective of regional jurisdiction and hierarchical jurisdiction, the increase in administrative costs is an indisputable fact[7].

3.1.3 Difficulty 3: Doubts about the credibility of the administrative reconsideration organ

Public trust, in popular terms, refers to the power of public trust. One of the important theoretical sources and ideological foundations of government credibility is the social contract theory. The main point of this theory is that all or the majority of social members feel that the natural state is not good, reach an agreement through consultation, voluntarily hand over natural rights, and the government and the public form a contractual relationship. The public measures the credibility of the government by whether it fulfills the contents of the contract. In recent years, due to the special relationship between the respondent for reconsideration and the reconsideration organ - they belong to the same administrative system and are in a vertical relationship of leadership and obedience between superiors and subordinates, the counterpart has shaken the credibility of the administrative reconsideration organ.

"As the reconsideration is conducted by a person who belongs to the same organ as the official who made the original decision, the possible result is that it has only become an obstacle for the applicant to seek effective relief, resulting in delays and additional costs, but has not been able to obtain a truly neutral and objective reconsideration." [8] The idea of "protecting each other by officials "has always been criticized by the public. In real life, the administrative acts made by the lower level will generally seek instructions from the higher authorities in advance. In case of violation of the law, the higher level reconsideration organ will" turn one eye to the other "and pervert the law for personal gain, such as refusing to accept administrative reconsideration cases that should be accepted or shirking responsibility for each other or evading responsibility; In addition, the specific institutions responsible for the reconsideration work in the reconsideration procedure do not have the status of administrative subjects, do not have their own independent declaration of intention, and are subordinate to the chief executive. However, the chief executive does not have a comprehensive understanding of the case as the specialized personnel of the reconsideration institution. Improper communication and connection within the administrative system will lead to inappropriate decisions. Under such circumstances, the reconsideration organ fails to fulfill its duties in fulfilling the contents of the contract, resulting in a decline in the credibility of government organs among the people and a departure from the construction of a rule of law government in China.

3.2 System Dilemma: Double Crisis of the Characteristics of Joint Action and the Right of Disposition of the Parties

3.2.1 Violation of the rules of joint action

According to the legal provisions of China(Article 27 of the Administrative Procedure Law of the People's Republic of China: If one or both parties are two or more persons, an administrative case arising from the same administrative act, or an administrative case arising from a similar administrative act, or if the people's court considers that it can be tried together with the consent of the parties, it shall be a joint action.), if the subject matter of action has the same nature, it is a necessary joint action, and if the subject matter of action is the same type, it is an unnecessary joint action. The former must be tried together, and the latter may be tried separately or jointly with the promise of the parties because there is no inseparable legal relationship.

After the reconsideration procedure is maintained, the behavioral factors affecting the

rights and obligations of the counterpart are only the decisions made by the original administrative organ and the decisions made by non-reconsideration acts, so only the original organ shall be the defendant, and the reconsideration organ shall not be taken as a co-defendant to participate in the proceedings. This approach does not apply to the constituent elements under the joint action and cannot be matched with the joint action.

3.2.2 Ignoring the right of disposition of the parties

The civil law stipulates that the parties shall enjoy the right of disposition that does not violate laws and regulations, public order and good customs, which can be said to be very free. Litigation is mainly based on the principle of parties, and the plaintiff can choose the defendant and the content of the lawsuit independently. Under the influence of the civil litigation mode, the theory and practice of administrative litigation have also been reformed, tending to the litigant litigation mode, defining the scope of judicial relief for administrative acts, and following the intention of the internal freedom of the interested parties without violating the prerequisite of jurisprudence.

According to the provisions of judicial interpretation(Paragraph 1 of Article 134 of the Interpretation of the Supreme People's Court on the Application of the Administrative Procedure Law of the People's Republic of China: After the reconsideration and maintenance of the decision, the plaintiff only brings a suit against the administrative organ that has made the original administrative act or the reconsideration organ that has made the reconsideration decision, and the people's court shall inform the plaintiff to add a defendant. If the plaintiff does not agree to the addition, the people's court shall list the other organ as a co-defendant), due to the statutory addition of the court, the final result is that the reconsideration organ and the original administrative organ are co-defendants. However, on the premise that the parties consider the realistic difficulties, they think that the problem can be solved only by taking one party as the defendant, but the court has increased the number of defendants of the other party, such an addition is of a "compulsory nature", neglecting the choice of the parties, making the plaintiff's possibility of winning the lawsuit reduced, and at the same time, it is also contrary to the free will of the parties and the right of the parties to free disposal.

To sum up, we recognize that there are dual difficulties in reality and system for two organs to act as defendants together. In 2014, the defendant rules of the reconsideration organ were amended by legislation on the basis of the most important practical problems, which is a policy consideration. In fact, such practices are more invalid, so we cannot choose to ignore the unreasonable defects of the defendant rules at the current stage, and in the future, we will tend to call on us to correctly position the identity of the subject of reconsideration. Therefore, we should fully respond to the lawsuit at the moment, seize the opportunity to revise the defendant rules after the reconsideration and maintenance decision is made in a timely manner, and use other ways to solve the most important practical problems, so as to seek a more perfect and appropriate way to maximize the existing difficulties.

4. Theoretical Logic: Accurately Positioning the Nature of "Administrative Reconsideration Organs as Co-defendants"

4.1 Whether the Reconsideration Organ Shall be the Co-defendant -- Based on the Differences of Theoretical Logic

As for the nature of the reconsideration act, the mainstream has the following three types: the first is "administrative", which holds that the administrative reconsideration decision is essentially a specific administrative law enforcement act made by an administrative organ, which belongs to a purely administrative activity, and it shall be subject to judicial review and supervision, and the reconsideration organ may act as a co-defendant. The second view is "judicial", which holds that administrative reconsideration is essentially a judicial act, and the reconsideration organ is like the role played by the people's court. The disputes arising are judged on the basis of independence from the two parties, with emphasis on the interests of the citizen. The existence of such status should not make it fall into the "swamp" of the defendant. The third view is "quasi judicial", which holds that administrative reconsideration has the dual nature of administration and justice, is not purely administrative activities, and is more different from judicial litigation activities, so it has two functions of supervision and relief, and

is dominated by right relief.

Compared with the three viewpoints, the first and second viewpoints are not in-depth, and the former is confined to the internal system framework, pays attention to the supervision of organs, and neglects the intention of citizens' rights and interests outside the reconsideration and rescue system; The defect of the latter is that it equates reconsideration with litigation, confuses the differences between the two, and fails to pay attention to the internal problems of administration. Therefore, we believe that "quasi judicial" can more accurately and comprehensively define the nature of administrative reconsideration [9].

4.2 Reconsideration Organ as Co-defendant: Based on the Wrong Understanding of "Administrative Nature"

The reason why China considers that the reconsideration organ should be a co-defendant after the legislative amendment is that the nature of administrative reconsideration is defined as "administrative" and the decision made by the administrative reconsideration organ is regarded as "secondary decision". The amendment of the law in the future still adheres to this idea, and puts forward the theory that the original administrative act and the administrative reconsideration decision are "integrated", which changes from "single defendant" to "double defendant", and the original administrative organ and the reconsideration organ become a whole. It seems that under the maintenance of the original specific administrative act, the parties should be allowed to bring a lawsuit against the reconsideration decision with the reconsideration organ as the defendant.

However, we must realize that the theory of administrative nature makes the reconsideration organ, which was originally the judge of rules, "drop" to the status of administrative counterpart, and makes the reconsideration decision become an ordinary actionable act. In order to avoid the reconsideration organ losing its status as an intermediary and ensure the application of its statutory reconsideration right, citizens, juridical persons and other organizations seek right relief through administrative reconsideration and safeguard the leading carriage of "right relief", we must find the nature on the basis of not too biased theoretical logic.

4.3 Reconsideration Organs Should Not Be Joint Defendants -- Based on the Correct Orientation of "Quasi-judicial"

The argument of "secondary decision" has also been refuted, leaving aside the inherent flaws in the logic of "secondary decision" for the time being, and the status of specific administrative acts and reconsideration decisions cannot be equated, we can understand this nature from several aspects:

4.3.1 Administrative reconsideration is remedial

The basic principles of administrative reconsideration run through the whole process of reconsideration activities, reflecting the substantive spirit of administrative reconsideration, and the relief can also be embodied only by looking at the basic principles. First of all, the reconsideration organ shall not only hear the acts committed by the original organ, but also verify the legal normative documents on which it is based, not only examine the legality of the specific administrative act, but also examine its rationality, which has made the administrative activities more thoroughly examined, that is, the principle of comprehensive examination of administrative reconsideration; Secondly, justice is finally another principle of administrative reconsideration, which indicates that reconsideration is not the ultimate way to solve administrative disputes. After reconsideration, the parties may also apply for litigation (except for the final reconsideration), and the final judgment made by the court has the final legal effect. Through the relationship of reconsideration, some inherent defects in reconsideration are made up, so that the counterpart can obtain more authoritative and effective judicial relief; Moreover, the principle of legality, openness, impartiality, timeliness and convenience is also to protect and relieve the legitimate rights and interests of the counterpart. The most direct embodiment of the relief to the administrative counterpart is the administrative compensation procedure. If the administrative act in the administrative reconsideration is illegal, infringes upon the legitimate rights and interests of citizens and causes actual damage to the counterpart, the counterpart may claim state compensation accordingly. Therefore, relief is undoubtedly one of the important characteristics of administrative reconsideration.

4.3.2 Administrative reconsideration is

supervisory

Article 1 of the Administrative Reconsideration Law clearly stipulates this feature, that is, to guarantee and supervise the exercise of functions and powers by administrative organs according to law. Supervisory nature can be reflected in that reconsideration is a reconsideration decision made by the reconsideration organ on the basis of ascertaining the facts of the case and in accordance with the norms of administrative law, including maintenance, performance, change, confirmation, redo, rejection of reconsideration applications and compensation decisions. It belongs to an internal supervision and error correction mechanism under the administrative reconsideration system. If the reconsideration process after administrative review considers that the original administrative act is illegal or inappropriate, the reconsideration organ may make a revocation decision (divided into full revocation, partial revocation and order to redo after revocation) to deny the legal effect of the original administrative act in whole or in part. The specific circumstances are stipulated in Article 28 of the Administrative Reconsideration Law. Similarly, other decisions such as alteration and redo also deny or approve the original administrative act in whole or in part, which fully reflects the internal supervision role of administrative organs. In addition, the right relief of the counterpart through reconsideration is itself a kind of citizen supervision through practical action.

4.3.3 Judicial nature of administrative reconsideration

The performance of judicial nature has several characteristics in common with administrative litigation: (1) With regard to its status and role: as a fair third party in litigation, the people's court tries to figure out the disputes and disputes between the plaintiff and the defendant, and makes administrative decisions; The same applies to the reconsideration organ. (2) On the starting principle of the beginning of the procedure: The exercise of the judicial power of the court follows the passive principle of "no prosecution, no reason". If a citizen fails to apply to the court for litigation in accordance with the law and meets the necessary conditions for prosecution, the court will not accept the case, resulting in the beginning of the proceedings; Similarly, the reconsideration organ will start the reconsideration procedure only after the counterpart has submitted an application for reconsideration, and it will not initiate the operation of the procedure on its own initiative. (3) Concerning the requirements for procedure: the judicial procedure shall be applied by the people's court in administrative litigation, which is very formal and strict. The degree of requirements for reconsideration procedure is basically close to judicial procedure in strict terms, and has its own complete set of procedures, including application, acceptance, trial and decision making. Similarly, strict time limits and some special procedures need to be followed[10]. (4) With regard to the purpose and purpose to be achieved: administrative litigation requires the settlement of disputes between the parties, and the settlement of disputes is also the main feature of the act of reconsideration, which is clearly pointed out in Article 2 of the Administrative Reconsideration Law of China.

Comprehensively administering the country according to law is the general plan that China has been adhering to in the past few years and in the future. The goal of administering the country according to law is definitely not a single, mutually exclusive and antagonistic one, but a few carriages advancing with the "treasure" of the target to realize diversified development such as the protection of the rights and interests of the counterpart, the settlement of administrative disputes and social stability and development. However, "a system will inevitably face the problem of value selection when it is designed. If the status of different values is equal and there is no distinction between primary and secondary values, many of the designs of the system may be riddled with holes because of the 'inability to choose but to choose all'."[11] Among the multiple carriages of administrative reconsideration, the first carriage should be "right relief".

5. Seeking a Way Out: Administrative Reconsideration Organs Do Not Choose to Be Co defendants

5.1 At This Stage – Responding Adequately to Suit Legislative Choices

After China's legislation has made a decision on the maintenance of the reconsideration organ, when the counterpart refuses to accept the decision to prosecute, he chooses the

reconsideration organ as the co-defendant, so the reconsideration organ should find a good position and fully respond to the lawsuit based on its own identity.

5.1.1 Clarifying with the original administrative organ their respective responsibilities in the proceedings

According to the provisions of Article 135 of the judicial interpretation, the two organs jointly bear the burden of proof for the legality of the original specific administrative act. In fact, the making of an administrative act follows the basic administrative procedure requirement of "obtaining evidence first, then making a ruling". This procedural requirement is manifested in that when the case is sued to the court, the administrative organ shall, according to the facts investigated in advance and the legal norms on which it is based, produce evidence to support the legality of its own act and bear the burden of proof. Therefore, the two organs should strengthen communication when adducing evidence (not equal to illegal collusion), achieve unity in adducing evidence, and avoid contradictions and conflicts within the two organs in the course of court trial. This is not only the basic requirement for full response to the lawsuit, but also a respect for the court trial, which is also conducive to clarifying whether it has caused damage to the rights and interests of citizens and linking up the system of state compensation[12].

5.1.2 Clarifying and strengthening the responsibilities of chief executives

The administrative law of China stipulates the system of responding to litigation by chief executives, but the implementation status quo is that the rate of appearance of chief executives in court is low, and it is difficult to see them appear in the dock of the court, which is not conducive to the settlement of administrative disputes, the improvement of credibility and the construction of a government ruled by law. Therefore, when it is necessary for the person in charge of the administration to appear in court to respond to the lawsuit, on the one hand, first of all, it is necessary to clearly define who the person in charge of the administration is to avoid the embarrassing vacancy of no one being responsible; Secondly, it is necessary to clarify what kind of cases the person in charge should prosecute. The appearance of the person in charge is not a simple form of "vase decoration" in the dock without saying a word. He needs to follow the rules of court debate, and inevitably needs to be fully prepared before the hearing. On the other hand, when the person in charge of the administration is unable to appear in court, he should first give feedback to the higher authorities so that the higher authorities can understand the situation of the case and avoid a stalemate; At the same time, it is necessary to fully explain the reasons to the court, send personnel to appear in court under the permitted conditions and in light of the nature of the case, but it is necessary to restrict the conditions for sending organ personnel to appear in court at will, and clarify the legal consequences of violating the system of appearing in court.

5.2 Future Trend – Amending the Rule that the Reconsideration Organ is a Co-defendant

5.2.1 Amending the rule that administrative reconsideration organs are co-defendants

With regard to the defendant who has been reconsidered and maintained, I agree with the view of Wang Qingbin, a Chinese scholar, and amend the defendant rule to read: "In a case that has been reconsidered, if the reconsideration organ decides to maintain the original administrative act, the administrative organ of the original administrative act shall be the defendant. When the people's court makes a judgment on the original administrative act, it shall make a corresponding judgment on the reconsideration decision at the same time." This amendment mainly combines practical and theoretical considerations, and is feasible: First, it breaks the above-mentioned dilemma of "reality" and "system": When the original administrative organ is only the defendant, the administrative reconsideration organ does not have to send personnel to court across the region, so as to reduce the cost of money and material, save human resources and conform to the principle of litigation economy; And avoid conflicts with the characteristics of the joint action system in operation; Moreover, to meet the "relief" and "supervision" under the quasi judicial nature: the reconsideration organ does not act as a co-defendant, which does not mean that it will be exempted from "supervision", and can "gloat" to watch the original administrative organ being placed in the judicial position. On the contrary, our approach is to make a judgment on the reconsideration decision together, and we have not chosen to set aside the reconsideration organ. The judicial organ can

still judge whether the work of the reconsideration organ is positive or not, and urge the administrative reconsideration organ to realize that it should actively fulfill its statutory obligations in advance by this way, otherwise its decision will also be negatived in judicial effect, so as to achieve the legislative purpose of relieving the rights and interests of the counterpart.

5.2.2 Improving the written trial of reconsideration decisions

After the legislative amendment, since the reconsideration organ is not listed as a co-defendant, the reconsideration organ does not need to appear in court to respond to the reconsideration decision, and the written trial requirements for the reconsideration decision should also be raised. From a practical point of view, there will be some problems of scribbling and perfunctory completion, and some serious problems will lead to the risk and doubt of fairness in the written trial, so improving and supervising the written trial is one of the key issues for the court to hear. For this, the Internet is relatively developed at present, and the court can widely listen to and solicit reasonable opinions through online means such as announcement and publicity before making a decision in the trial; Or combine the reconsideration hearing procedure to overcome the possible "black box manipulation", avoid mutual shielding and favoritism, and safeguard legitimate interests.

5.3 Ways to Improve – Ways to Improve the Effectiveness of Administrative Reconsideration

The solution of the problem of effectiveness has not been fully and effectively solved on the basis of taking the reconsideration organ as the co-defendant. In fact, the problem can also be solved by other means on the basis of not taking the reconsideration organ as the co-defendant. In philosophy, we have learned a concept that is systematic. Legislation also stresses unity and integrity. The legal system with Chinese characteristics is like a big tree with flourishing branches and leaves. With the Constitution as the core trunk, the big tree will not thrive only on the "branch" of the reconsideration system, there will be loopholes that cannot resist "pests", and more likely, it will become deformed with growth and eventually die. Therefore, in order to prevent the occurrence of the above circumstances, we should improve or establish appropriate supporting systems to better assist the revised mechanism of "the reconsideration organ is not a co-defendant" and promote the healthy growth of the "tree of laws" in China. "Resolving disputes is the ultimate purpose of administrative litigation. If a litigation system cannot be divided to stop disputes, the system is bound to not go far."[13] Liang Junyu, a Chinese scholar, also believes that the supporting system is an important basis for giving full play to the functions of the reconsideration system and better protecting the legitimate rights and interests of the counterpart. To activate the comparative advantages of administrative reconsideration, the new reconsideration law has made many efforts to deepen the impartiality of administrative reconsideration[14].

5.3.1 Establishment of specialized reconsideration organs in the system

Taking Zhejiang as a model, it fully recognizes the inclined situation of more letters and visits and less reconsideration caused by the failure of citizens to find the right institutions in the reconsideration procedure, recognizes the obstacles to low efficiency caused by the fragmented handling of problems by organs, and recognizes the difficulties in the implementation of reconsideration rights such as the loss of unified standards within the system and the attenuation of citizens'trust. Therefore, under the great torrent of the reform of the administrative reconsideration system, Zhejiang Province has gradually built its own stable "reinforcement ship" - the system whereby the government exercises the power of administrative reconsideration in a unified manner, including special reconsideration organs, and implements the principle that "the first level government retains only one administrative reconsideration organ". The effectiveness of solving the above-mentioned problems has not only improved the quality of case trial, but also restored the good "reputation" of the masses. As a small silhouette of China's development from relative backwardness over the years, Zhejiang Province stands at the forefront of the problem, and the measures and concepts for future revision of the mechanism can borrow its experience.

The situation that requires administrative organs to carry out reconsideration work is not transient, it is a long-term work. At present,

China lacks personnel with higher legal thinking, and reconsideration organs should train and absorb excellent specialized legal personnel, learn reconsideration skills and improve reconsideration level, which is also consistent with one of the core contents of China's legal thought; Regularly conduct professional training for personnel within the organ, requiring them to master professional theoretical knowledge in all aspects of reconsideration as far as possible; In the practice of reconsideration, enrich practical experience and summarize problems in a timely manner.

5.3.2 Improving the internal reward and punishment system of the administrative system

State public officials are prone to corruption caused by "borrowing" public power for private reasons, which not only reflects the failure of construction within state organizations, but also causes irreparable damage to the trust interests of the people. According to Bentham's concept of maximum happiness, after a certain act is committed, we hold an attitude of praise or criticism, preferring to consider whether its benefits to related parties have been supplemented or reduced. The abuse of public power by administrative organs should be criticized by the public because it is not conducive to the happiness of the majority of people. To correct such acts should be to restrict and supervise public power, and the reward and punishment system can play such a supervisory role of encouraging the advanced and urging the backward, especially the administrative sanctions among them can serve as a warning to administrative public servants. Therefore, it is also very important to improve the reward and punishment system for personnel in organs, which ensures that the acts of administrative personnel conform to the obligations entrusted by law from the authoritative legal system, and urges the enthusiasm of administrative personnel through the reward and punishment system to improve the effectiveness of reconsideration work.

5.3.3 Make full use of mediation and reconciliation means

The way to resolve administrative disputes is not just litigation, the reconsideration system contains a reconciliation and mediation system, and reconciliation refers to the settlement of disputes through peaceful consultation on the premise of voluntariness of both parties, so that the results can be generally satisfactory to both parties; Mediation refers to the settlement of disputes by both parties through consultation under the auspices and mediation of a third party or intermediary. Both reconciliation and mediation can reduce the possibility of the applicant's appeal to the court again. We often say that fair justice is the last line of defense to safeguard fairness and justice. The reconsideration organ should also use this thinking in handling disputes between the parties, strive for reconciliation or mediation between the applicant and the respondent as far as possible, and reduce the possibility of becoming a co-defendant. However, it is also necessary to be vigilant that the reconsideration organ should avoid inappropriate defendants and use public power to force both parties to reach reconciliation and mediation. The most typical one is the dispute over administrative agreement, which is established on the basis of the consensus of the parties, which has become the legal basis for mediation of disputes over administrative agreements[15].

6. Conclusion

To sum up, the positive benefits of the practice of the two organs as "co-defendants" cannot be denied: it is precisely for these reasons that some scholars support the reconsideration organ as a co-defendant to alleviate the embarrassing situation of a high rate of reconsideration maintenance and prosecution. However, we must also see that this practice has caused the reconsideration organ to fall into a dilemma: due to the miserable efficiency reduction and cost increase of the reconsideration organ, the credibility of the reconsideration organ is in danger, and a realistic dilemma has arisen; Violation of the joint action system and the system of the right of disposition of the parties has caused institutional difficulties. As a co-defendant, the reconsideration organ has a wrong understanding of the "secondary theory" and the administrative nature, and should stand within the correct answer to understand the problem quasi judicially and resolve many contradictions in the operation of the system. On the one hand, because the legislation cannot be changed quickly at this stage, the reconsideration organ should adapt to its role, improve its level and fully respond to the lawsuit; On the other hand, it is necessary to define the status of the reconsideration organ, follow up the revision of the legislative

mechanism in a timely manner, and realize that the way out of the dilemma can also be found through the establishment or improvement of other channels.

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