

## On the Scope Limit and the Time Limit of the Temporary Administrative License Granted by Local Government Rules

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Received 30 March 2018; accepted 15 June 2018

Published online 26 July 2018

### Abstract

Administrative License Law of the People's Republic of China authorizes local provincial government rules to grant a temporary administrative license with the purpose of satisfying necessary needs of administrative management when governing laws, administrative laws and regulations and local regulations haven't been formulated. Since the institution has been put into force, a lot of problems have arisen. For example, the scope of the granting of a temporary administrative license is indeterminate and the phenomenon of overdue implementation prevails. This article has adopted the Scope Theory in light of the scope of the granting of a temporary administrative license and defined the boundary of Scope from the perspective of safeguarding civil rights and interests to the full. When a temporary administrative license has expired, it's still in force as long as related local regulations are under discussion to guarantee the continuity of administrative management, but a deadline shall be set to avoid overdue implementation. A temporary administrative license, which is due, shall become invalid automatically after expiring as long as related local regulations haven't been submitted to relevant department for approval. When it has been submitted to the Local People's Congress and its Standing Committee for discussion of further exercise and related local regulations haven't been formulated, it shall become invalid automatically after the legal time limit, which is equal to the time announced in the discussion result or the deadline set, expires. When the stop time hasn't been announced before the due date of the legal time limit, related administrative agencies are liable for

the administrative counterpart's loss incurred during the period of overdue implementation.

**Key words:** The right to grant an administrative license in local government rules; Temporary administrative license; Overdue implementation

Yu, Z. H. (2018). On the Scope Limit and the Time Limit of the Temporary Administrative License Granted by Local Government Rules. *Canadian Social Science*, 14(7), 89-96. Available from: <http://www.cscanada.net/index.php/css/article/view/10485>  
DOI: <http://dx.doi.org/10.3968/10485>

### INTRODUCTION

Since an administrative license is administrative behavior that is aimed at limiting the citizens and legal persons' rights, the granting shall be double cautious. Moreover, administrative agencies serve as the grantor of an administrative license. If they are entitled to grant an administrative license, it's tantamount to self-authorization, which is at variance with the principle of rule of law. The infinite expansion of administrative legislative power is bound to bright about the transfer and loss of the power of legislatures. As a result, the legislative power and the executive power will be wielded by the same organ. Thus "freedom will be no longer in existence." (ZhanFuman, 2011) The right to grant an administrative license is only enjoyed by the Parliament through laws in Western countries such as Britain. (YingSongnian, 1993) However, since China's society and economy have developed rapidly and the legal system remains imperfect, local governments are entitled to satisfy the need of administrative management. In addition, "laws are always falling behind administration," which is determined by the characteristics of both the legislative function and the administrative function. The prudent legislation is doomed to falling behind the high-efficiency administration, wherefore canceling the right

to grant an administrative license in local regulations will widen the gaps between laws versus administration and legislative regulations versus daily life. (QiuRuihong, 2012) If the organ of making regulations can become closer to daily life and is entitled to grant an administrative license within limits under the authorization of laws and regulations, administrative activities will have rules to follow and provide experience for the making of laws and regulations. As a result, the sporadic regulations can be replaced by the unified law-making stipulation. (WangMingyang, 1987)

## 1. RAISING QUESTIONS

In the process of legislative discussion of Administrative License Law, local governments' limits of the right to grant an administrative license have been studied repeatedly. (QiaoXiaoyang, 2002) After the draft has been amended for several times, local governments' right to grant an administrative license reduced to that only provincial-level governments are entitled to grant a temporary administrative license. (QiaoXiaoyang, 2003) According to Article 15 of Administrative License Law, if laws and regulations are not formulated, the procedure for an administrative license may be instituted by provincial-level governments' regulations. If it is necessary to continue granting a temporary administrative license at the expiration of a whole year, the said government shall request the people's congress or its standing committee at the corresponding level to formulate local regulations.

The right to grant an administrative license enjoyed by local governments has been posed strict restrictions on. Because of the long-standing administration habit, governments have improved and perfected the granting procedure of a temporary administrative license by making laws in succession with the aim of making use of the limited right to grant an administrative license in a better manner. For example, Regulations of Hebei Province on Administrative Licenses, Regulations of Guangdong Province on the Supervision and Management of Administrative Licenses and Interim Procedures of Chongqing Municipality on the Evaluation of Administrative Licenses. Moreover, Provisions of Shanghai Municipality on Granting Procedures of Temporary Administrative Licenses has been the most complete and normative one, which provides the related concepts of the temporary administrative license, the procedures of audit, argumentation and public participation when the temporary administrative license is being granted, the ones of evaluation in the process of implementing it and the ones of cohesion when it expires and is tabled for discussion at the people's congress or its standing committee at the corresponding level.

Although the specific procedures of granting, audit and

evaluation haven't been provided by laws, governments of various regions have improved them according to the Legislation Law of the PRC and Administrative License Law, which has become a precondition for carrying out the system of the temporary administrative license. However, the temporary administrative license has gradually withdrawn from the horizon of local governments and the public after a period of time. On the one hand, local governments have been adapted to carry out administration without granting a temporary administrative license. On the other hand, due to a deficiency of legislation, the scope limit of the granting of a temporary administrative license and the time limit of implementation are vague. As a result, the practice of administration is not workable and there are a lot of overdue temporary administrative licenses, so a lot of administrative counterparts' rights and interests have been infringed and the temporary administrative license has failed to protect the rights and interests of citizens and legal persons. Provincial-level local governments are entitled to grant a temporary administrative license according to Administrative License Law, which can not only impose restrictions on the executive power but also enable the administrative agency to carry out administration in a more effective manner. After the system of the temporary administrative license has been put into practice for a period of time, it has gotten into trouble due to incomplete legislation, which is shown below.

First, according to Article 15, Section 1 of Administrative License Law, the expression of "there is no governing law, administrative law and regulation or local regulation" remains controversial in both theory and practice, because it is difficult for local People's Congress, local governments and local courts to determine the scope of the granting of the temporary administrative license. Thus they are prone to have divergences. In practice, the standpoints of the Commission of Legislative Affairs of the National People's Congress (NPC) and the Legislative Affairs Office of the State Council of the People's Republic of China contradict each other and there is no unified applicable guiding principles for local governments, which hinders the smooth implementation of the said system.

Second, in terms of the matter of requesting the people's congress or its standing committee at the corresponding level to continue granting a temporary administrative license, the conditions and forms of continuing granting it are stipulated in Article 15, Section 1 of Administrative License Law, which stipulates that the said government shall request the people's congress or its standing committee at the corresponding level to formulate local regulations. However, it has failed to stipulate the effect of a license during the period when the temporary administrative license has been expired and related local regulations haven't been formulated, wherefore the exercise deadline cannot be

confirmed. The Administrative Measures of Demolition of Houses on the Collectively-Owned Land of Beijing City implemented by the people's Government of Beijing City granted the Demolition License of houses on the collectively-owned land and approved the implementation plan of the demolition of houses on the collectively-owned land, which were retained in the process of sorting out administrative licenses in 2004. After that, the said government requested the people's congress or its standing committee at the corresponding level to formulate local regulations. Fifteen years have passed, the local regulations still haven't been formulated, but the Demolition license of houses on the collectively-owned land and the implementation plan of the demolition of houses on the collectively-owned land are still in effect. In this case, although the temporary administrative license has obviously exceeded the time limit and it has been under discussion by the Local People's Congress for a long time, it is still in force. A lack of legislation has failed to regard this kind of overdue implementation as an unlawful act.

Third, failure to stipulate the procedure for stopping the implementation of a temporary administrative license has contributed to the uncertainty of the expiry date. Since there is no procedure for the cessation of the implementation of a temporary administrative license, two opinions have come into being, which are the automatic avoidance and the announcement of avoidance. As a result, administrative agencies can choose the procedure by themselves and the public can't know the expiry date or the deadline of implementation in a straightforward manner. Hence, administrative agencies are prone to abuse their power in practice, while the administrative counterparts' rights and interests are apt to be damaged.

It's worth noting that local governments are trapped in these questions and find it hard to find out explicit directions, wherefore it's difficult for them to implement the system of the temporary administrative license. However, the academic circle has paid no attention to the said system. Before the implementation of Administrative License Law, some scholars have studied the right to grant an administrative license in local government rules but haven't pay continuous attention to the effect of enforcement of the said law and overlooked new problems occurring in the process of implementation. To date there is only a small number of articles that pay attention to the implementation of the system of the temporary administrative license. For example, *The Limit of the Higher Level Law on Granting Administrative Licenses in Local Government Rules by Taking the Judgement Main Points 1 of the No.5 Guiding Case Issued by the Supreme People's Court as the Analytic Target* by Li Wenhui has explored the scope of the granting of a temporary administrative license, and *The Law Interpretation of the Right to Grant Administrative Licenses in Local Regulations Based on the Analysis of the Luwei Case*

by Jin Zining has put forward the eclecticism theory and the systematic interpretation theory. On the Questions of How to Transform a Temporary Administrative License into Laws and Regulations by Xiong Jinghua has made a general explanation for the time limit of one year, which has been regarded as the deadline for making a request for continuous implementation rather than the deadline for implementation.

Due to a lack of theoretical foundation, the implementation of the said system is under a difficult circumstance. Especially after the amendment to the Legislation Law of the PRC, the right to grant an administrative license in local government rules has been limited and the problems of the temporary administrative license have been highlighted. The academic circle is worth paying attention to and studying how to formulate the value orientation of a temporary administrative license and solve the problems of implementing the said system in a correct manner.

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## 2. THE SCOPE LIMIT OF A TEMPORARY ADMINISTRATIVE LICENSE GRANTED BY LOCAL GOVERNMENT RULES BASED ON THE SCOPE THEORY

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According to Article 15 of Administrative License Law, restrictions on the scope limit of the granting items of a temporary administrative license have been imposed and the temporary Administrative license granted by local governments is not allowed to conflict with the Higher Level Law under the condition that there is no governing law, administrative law and regulation or local regulation yet. On the one hand, laws have imposed restrictions on the scope limit of the granting items of a temporary administrative license and the right to grant an administrative license in local government rules has been limited strictly. On the other hand, due to the practical requirement of administration, laws have left room for the scope of the granting items of a temporary administrative license. According to Article 12, Section 2 of the Law of the People's Republic of China on Administrative Penalties: "there is no governing law, administrative law and regulation or local regulation yet...", which is its first appearance in the said law. Compared to the Law of the People's Republic of China on Administrative Penalties, Administrative License Law authorizes the right to grant Administrative Licenses in a more cautious manner, whose statement on the scope limit is more precise.

### A. Disputes over the Scope Limit of a Temporary Administrative License Granted by Local Government Rules

According to Administrative License Law, if there is no governing law, administrative law and regulation or local regulation yet, an administrative license may be

established by means of local regulations. However, this kind of legislative statement remains controversial, and there are two totally different theories, which are the Scope Theory and the Item Theory. According to the Scope Theory, it's "the scope in which governing laws and administrative regulations haven't been formulated yet." In other words, as long as there's the Higher Level Law in this scope, local governments are not allowed to grant an administrative license, which is in a strict sense. However, according to the Item Theory, it's "the item on which governing laws and administrative regulations haven't been formulated yet." In other words, as long as the Higher Level Law has failed to make laws on that item, local governments are allowed to grant an administrative license, which is in a broad sense. Under the circumstances, the written reply of the Commission of Legislative Affairs of NPC adopts the Scope Theory,

"... If laws and administrative laws and regulations have been formulated in a certain scope or on a certain matter and have failed to authorize the right to grant an administrative license in a cope or have failed to authorize the right to grant an administrative license on an items of the cope, local regulations are not allowed to grant an administrative license." (The Legislative Affairs Commission Of The NPC Standing Committee, 2004)

On the contrary, according to the 14th point of On the Answers to Questions About Administrative License Law issued by the secretarial administration department of the Legislative Affairs Office of the State Council of the People's Republic of China in Jan. 2nd, 2004. It interpreted "if there is no governing law, administrative law and regulation or local regulation yet", which means the item on rather than the scope in which governing laws and administrative regulations haven't been formulated yet. In other words, they prefer the Item Theory.

In practice, there are cases caused by divergence of opinions between local people's congress and local governments in terms of the understanding of articles of law. For example, The Acquisition License of Producible Scrap Metal granted by Shanghai Municipal Peoples Government in 2005 is faced with expiration because it has failed to be transformed into local regulations. Local governments think it can and should be transformed into local regulations, because the Higher Level Law has failed stipulate such an item. However, local people's congress think it shouldn't be transformed into local regulations, because the Higher Level Law has stipulated the scope. (ZhuQi, 2008) This case reveals that the difference of opinions between local people's congress and local governments in terms of the understanding of articles of law, and both parties have understood the articles of law from the perspective of the Item Theory and the Scope Theory respectively. As a result, controversy has been caused. The dispute between the Scope Theory and the Item Theory has contributed to the vague scope limit of the granting of a temporary administrative license. Owing

to the fact that local governments have failed to figure out the scope limit in an accurate manner, the legality and effect of a temporary administrative license remain unstable and the system of a temporary administrative license is not workable.

### **B. The Privileged Position of the Scope Theory in Forming the Theoretical Basis in Terms of the Examination and Weigh of Legislative Purposes and the Legitimacy of Democracy**

According to the Supreme People's Court, in the process of guiding the No.5 Luwei Case, Regulations on the Management of the Salt Industry has failed to grant industrial salt transport licenses, wherefore local government governments are not allowed to grant the system of the industrial salt transport license, because the Supreme People's Court has regarded the granting condition of licenses, "there's no governing law, administrative law and regulation and local regulation," as the scope of the management of the salt industry rather than a specific license item, which conforms to the interpretation on the Scope Theory in the written reply given by the Legislative Affairs Office of the State Council of the People's Republic of China. However, disputes over this matter cannot be eradicated completely, owing to the fact that the term 'scope' is only a relative concept whose meaning is just broader than that of the term 'item.' Moreover, both the Scope Theory and the Item Theory haven't offered an accurate interpretation on the specific limit of scopes and items. In fact, these two theories are to discuss whether or not administration or the rights and interests of citizens should be placed particular emphasis on within the granting limit of licenses authorized by legislation and the right to grant an administrative license in local government rules should be limited further.

Some scholars have put forward eclecticism such as the Revised Item Theory, which means that if the higher level law of a certain scope has failed to grant a certain item of an administrative license and hasn't excluded the granting of such a item of an administrative license in an explicit way and in light of the objectives and principles of the said higher level law, local government rules in this scope may grant a temporary administrative license when it accord with other legal conditions. (LiWenhai, 2013) However, some other scholars have introduced other theories to figure out the dispute. For example, the right to grant an administrative license in local legislation in terms of Chinese *de lege lata* has been grasped as a whole and the standardized system of the granting right in Chinese local legislation, including three levels, rules of organization-legislative law-administrative license law, and the positive authorization and the negative restriction at each level, has been showed clearly based on the systematic interpretation theory. (JinZining, 2017)

According to the author, the Scope Theory should be adopted to interpret Article 15, Section 1 of Administrative License Law, in terms of the examination and weigh of both legislative purposes and the legitimacy of democracy, and the limit of the term 'scope' should be defined for the purpose of safeguarding the rights and interests of citizen to the maximum extent. In term of the purpose of legislation, if laws may meet the social needs through the license granted by the Higher Level Law or other administrative means, a temporary administrative license is not allowed. Hence, we can find that lawmakers don't want to entitle local government rules to the granting right of licenses, and a temporary administrative license is only a matter of expediency. From the perspective of the legitimacy of democracy, since the granting right of the administrative license is closely linked with the fundamental rights and obligations of citizens and the vitality of legal persons, new rights and obligations should not be created without laws and regulations. (XuAnbiao, 2003) The admission of the right to grant an administrative license in local government rules means governments, the executive organ of people's will, may limit the rights of citizens, which is contrary to the principle of rule of law and a lack of legitimacy in terms of legal principles. Hence, the system of the temporary administrative license is destined to die out when social norms remain stable in a gradual manner and legislation has been perfected increasingly. As a result, the granting conditions of Temporary Administrative System should be interpreted in a strict way. In other words, as long as a scope has been standardized by a Higher Level Law, a temporary administrative license should not be granted.

### **3. THE TIME LIMIT OF CONTINUOUS IMPLEMENTATION OF TEMPORARY ADMINISTRATION LICENSE GRANTED BY LOCAL GOVERNMENT RULES**

#### **3.1 The Status Quo of the Discussion System of Temporary Administration License After Expiration**

According to Administrative License Law, if a temporary administrative license established by means of a regulation of the people's government of a province, autonomous region or municipality directly under the Central Government is necessary to keep on implementing it after a year, the people's congress and its standing committee of the same level shall be proposed to formulate a local regulation. The temporary administrative license may be submitted to the Local People's Congress and its Standing Committee for discussion of further implementation prior to the date due, and its effect during the period between its expiration and the completion of

discussion remains obscure in legislation. In practice, if we regard one year as the time limit of the implementation of a temporary administrative license, it's obviously to the disadvantage of the stable development of society and economy and cannot meet the requirements of the continuity of administration. For example, the people's Government of Beijing City retained the Franchising of Urban Infrastructure in the process of sorting out temporary administrative licenses in 2004. As stipulated by Administrative License Law, the said Franchising of Urban Infrastructure would expire on July 1st, 2005. However, in fact, Beijing Municipal People's Congress had already planned to enable the said franchising to be implemented continuously and stipulate local regulations next year. Thus it was inappropriate to believe the said franchising was no longer in force during that period. The Commission of Legislative Affairs of NPC has made an explanation below in terms of the time limit granted by laws.

"To guarantee the continuity of administration, the draft local regulations shall be submitted to the people's congress or its standing committee at the corresponding level for discussion before the expiration of a temporary administrative license. Before local regulations have been passed, the said temporary administrative license may remain in force. If the said temporary administrative license hasn't been retained by local regulations, the said temporary administrative license should be annulled from the date of the promulgation of the said local regulations." (The Legislative Affairs Commission Of The NPC Standing Committee, 2004)

However, new problems have been aroused. In other words, a temporary administrative license's period of validity has been prolonged in disguised form. For example, according to (2013) No. 571 Final Judgement of Guangdong Higher People's Court, the Court affirms that the temporary administrative license granted by the Law of Guangdong Province on the Management of Rural Collective Economic Organizations promulgated in 2006 may be under discussion until 2014 in by invoking the written reply of the Commission of Legislative Affairs of NPC so as to guarantee the continuity of administration. As a result, the said temporary administrative license still remains in force. Both the written reply of the Commission of Legislative Affairs of NPC and the similar provisions of continuous implementation of local government rules in local regulations have failed to set the period of validity of the temporary administrative license under discussion and only believe that the said temporary administrative license shall cease to be effective when the discussion result affirms it shouldn't be retained.14 Although all parts of China have publicized regulations to formulate local regulations, the time limit of discussion hasn't been imposed restrictions on in general. Thus a temporary administrative license may be under discussion and remain in force all the time in theory, which has prolonged the temporary administrative license's period of

validity in disguised form. In fact, it's a kind of overdue implementation, which enables local government rules to break the right to grant an administrative license as stipulated in Administrative License Law.

### **3.2 The Setting of a Temporary Administrative License's Deadline**

According to the author, the written reply of the Commission of Legislative Affairs of NPC only solves the problem of feasibility when a temporary administrative license shall be transformed into local regulations, which allows the continuous implementation of a temporary administrative license after local governments have submitted it to the people's congress or its standing committee for discussion. However, the overdue implementation of the said temporary administrative license may be undergone in a legal manner owing to a lack of other supplemental restrictive provisions. In order to guarantee the continuity of administration, it's necessary to remain in force during discussion. However, in order to prevent administrative agencies from prolonging the temporary administrative license's period of validity just as their wishes by using discussion as an excuse, a new period of validity should be set through legislation as a supplemental provision. The said supplemental provision shall not conflict with current laws and interpretations and hinder the legislative procedure of the Local People's Congress and its Standing Committee, whose effect is only restricted to the scope of a temporary administrative license.

Through overall consideration, it's appropriate to set a temporary administrative license's deadline, which shall conclude the following content. First, because the granting of the deadline is directed against the temporary administrative license which is under discussion and overdue implementation, it's not applicable to the temporary administrative license which hasn't been submitted for discussion. Hence the submission for formulating local regulations is a precondition for prolonging the period of validity. Second, the deadline is from the date of implementation to the date of expiry, which is a fixed term, because the temporary administrative license, which still remains in force after the submission for discussion, has, in fact, exceeded the original period of validity. The reason why it still remains in force is that related local regulations maybe formulated and prolonging the period of validity can guarantee the continuity of administration. Setting the deadline is aimed at restricting such prolonging. As a result, the period of validity shall not be suspended, discontinued and prolonged. Third, according to the general lawmaking cycle and habit of the Local People's Congress in formulating local regulations, 2-5 years are appropriate for the deadline. The setting of the deadline can not only guarantee the feasibility of the system of the temporary administrative license and meet the

requirements of administration but also prevent the overdue implementation of the temporary administrative license in an effective manner and safeguard the public's rights and interests.

## **4. THE FORM AND TIME LIMIT OF THE CESSATION OF THE IMPLEMENTATION OF A TEMPORARY ADMINISTRATIVE LICENSE GRANTED BY LOCAL GOVERNMENT RULES**

### **4.1 Two Forms of the Cessation of the Implementation of A Temporary Administrative License**

In the field of the rule of administrative law in China, administrative agencies' way of exercising their power and the procedures instituted by them haven't been formulated in an effective manner, because the making of substantive law has been paid attention to for a long time and the provisions related to the power of administrative agencies and management measures adopted by them have been valued. (WangWanhua, 2013) Administrative License Law has failed to stipulate the procedure of the cessation of the implementation of a temporary administrative license. To date there are two opinions about the procedure of the cessation of implementation, which are automatic avoidance and the announcement of avoidance.

From the standpoint of automatic avoidance, a temporary administrative license shall become invalid automatically after the date of expiration without any form or procedure. According to the statement of article of law, "If it is necessary to keep on implementing the administrative license after a year..." In other words, if a temporary administrative license doesn't need to be implemented in a continuous manner after one year's implementation, it shall become invalid, which is a period of validity rather than a period with the aim of satisfying the certain procedure in the announcement made by local governments. Hence the said statement shall be regarded as automatic avoidance. However, if the promulgation and enforcement of new laws, regulations, rules and normative documents become effective only on announcement, an administrative license, as an administration means that can produce an effect on the whole society shall follow suit. As a result, some scholars reckon that the temporary administrative license, which has been implemented for one year and failed to be submitted for formulating local regulations by local governments, is not applicable to the legal conditions of automatic avoidance, which shall be publicized by publishing a document by local governments, because there's no provision related to the Automatic Avoidance of the temporary administrative license in Administrative License Law. (XiongJinghua, 2005)

From the perspective of the announcement of avoidance, a temporary administrative license shall become invalid through the announcement made by local governments, wherefore the said temporary administrative license will become invalid on the date of expiration mentioned in the announcement. In practice, local governments tend to cease implementing a temporary administrative license by sorting out administrative licenses at regular intervals through making announcements. However, if a temporary administrative license still remains in force after the legal date of expiration, it will be deemed as overdue implementation. In fact, there are conditions that the date of expiration mentioned in the announcement has exceeded the legal period of validity of one year. For example, a temporary administrative license has been granted according to Article 10 of Measures for the Administration of the Military Service Card of Citizens of Guizhou Province,

“Male citizens of the right age shall hold the military service card for school attendance, obtaining employment, applying for exit, applying for the land use certificate and applying for the industrial and commercial business license. Related departments are not allowed to go through the formalities for the ones who don’t hold a military service card. Moreover, the said departments are not allowed to go through the formalities within one year for the ones whose military service card carries the record of Refuse to conscript.”

That is promulgated in 1996 and amended in 2008, which hasn’t been transformed into local regulations, but it still remains in force until now because the government of Guizhou Province hasn’t made an announcement in order to cease the implementation of the said temporary administrative license.

#### **4.2 Imposing Restrictions on the Date of Expiration and the Procedure of Cessation**

The date of expiration and the procedure of cessation of a temporary administrative license shall be formulate through legislation. One of the important symbols of modern rule of administrative law is the consummate system of administrative procedures. Serving as an important part of administrative law, the system of administrative procedures is of great significance to the legal system building, which has been emphasized repeatedly by the domestic and abroad scholars. (JiangBixin, 2012) According to Article 5, Section 1 and Section 2 of Administrative License Law, the procedure for administrative licenses shall be instituted and an administrative license shall be granted in adherence to the principles of openness, fairness and impartiality, and the granting and outcome of an administrative license shall be publicized except where State secrets, business secrets and individual privacy are involved. Hence, the Cessation of implementation of the temporary administrative license shall be publicized.

As stipulated by in the laws, the Cessation of implementation of a temporary administrative license shall be publicized in the form of announcement. However, the temporary administrative license’s period of validity, which is the legal date of expiration, is not subject to the announcement. When the legal date of expiration is different from the date of expiration mentioned in the announcement, the administrative agencies shall make announcement before the date of expiration. If the date of expiration mentioned in the announcement is later than the legal date of expiration, the license shall be invalid during the period between the legal date of expiration and the date of expiration mentioned in the announcement. If the administrative counterparts’ rights and interests have been infringed, for this reason, administrative agencies have legal liability for any damage they cause because it’s illegal for the said administrative agencies to delay making an announcement.

## **CONCLUSION**

An administrative license serves as an important means for administrative agencies to perform the function of management of public affairs, and the administrative agencies are entitled to grant an administrative license through legislation.

“The content of an administrative license tends to be the activities restricted or forbidden by the country and the act of licenses is to remove restrictions or prohibitions on the eligible citizens or legal persons and allow them to engage in an activity and enjoy specific rights and qualifications.....The license item shall be provided by laws explicitly and a license is an act of lifting a ban based on the general restrictions and prohibition. Hence, an administrative license is an act of placing restrictions on the freedom of activities of citizens and legal persons for most people.” (YingSongnian, 1998)

As a result, in order to safeguard the rights and interests of citizens and prevent administrative agencies from abusing power. Local provincial government rules are entitled to grant an administrative license according to Administrative License Law. For the sake of the unification of the national legal system, showing the relationship between the Higher Level Law and Lower Level Law, preventing administrative agencies from abusing power and safeguarding the public rights and interests, the granting of a license shall be carried out in a strict manner, including granting a license by perfecting local government rules in the scope where laws, administrative laws and regulations and local regulations haven’t been formulated, standardizing the implementation deadline when a license has been tabled for continuous implementation and formulating the procedure for termination. In the process of perfecting legislation, on the one hand, we have to pay attention to the legality and rationality of the granting of a temporary administrative license, improve the feasibility of the

system of the temporary administrative license, as a transitional system, formulate the necessity of the said granting so as to ensure that local provincial governments can satisfy the needs of administration by effectively using the power. On the other hand, we have to see the illegitimacy of democracy in power itself, believe that it is doomed to vanishing, be watchful against the abuse and illegal use of power, avoid the unreasonable temporary administrative license and take strict precautions against the phenomenon of overdue implementation.

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