

The Value of Supervision of Administrative Reconsideration Under the Vision of People's Supervision Theory

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Abstract

The dispute over the positioning of the administrative reconsideration function has not stopped ever since the system was in place. China is a socialist country, and the theory of people's supervision is one of the important ideological achievements of the sinicization of Marxism-Leninism. The theory of people's supervision provides a theoretical basis for the existence of the administrative reconsideration supervision. The administrative reconsideration system has the property of people's supervision, and this attribute gives it the unique value of breaking the closeness of the internal control, preventing corruption, and bridging the internal and external supervision.

Key words: Political reconsideration; Theory of people's supervision; Function of reconsideration supervision; Value

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INTRODUCTION

According to Article 1 of the Administrative Reconsideration Regulations of 1990, "in order to maintain and supervise the administrative organs to exercise their powers according to law", the administrative reconsideration system was given a supervisory function at the beginning of its establishment. In 1994, "The

revised Administrative Reconsideration Regulations make administrative reconsideration an important form of supervision, so that higher-level administrative agencies can carry out more institutionalized and standardized hierarchical supervision of administrative activities of lower-level administrative organs." (Pi, 1999, p.73) Then, in 1999, the State Council's draft legislation on the Administrative Reconsideration Law clearly stated that "administrative reconsideration is a kind of supervision system for self-correction errors within the administrative organs" (Bai, 2007, p.82). It also brought the administrative reconsideration supervision function to its highest point in history. Subsequently, the legislative purpose of the *Regulations on the Implementation of the Administrative Reconsideration Law* of the State Council in 2007 "was to further exert the administrative reconsideration system in solving administrative disputes, building a government under the rule of law, and building a socialist harmonious society". Although it avoided the "internal supervision", *The Regulations on the Implementation of the Reconsideration Law* is a regulation formulated by the State Council. Its legal rank is lower than the *Administrative Reconsideration Law* enacted by the National People's Congress. Therefore, the internal supervision function of the administrative reconsideration system is at least effective at the legislative level.

However, many scholars have long believed that the deviation of the internal supervision function of administrative reconsideration leads to the non-independence of the main body and the strong administrative color of the procedure, which causes difficulties such as low efficiency of reconsideration, high maintenance rate, insufficient credibility and decreasing in number of cases (Zhou, 2004, pp.33-34; Wang, 2011, p.81; Liu, 2011, p.13; Shen, 2011, pp.66-67; Fang, 2004, p.41; Zhu, 2016, pp.63-64). At the same time, some scholars have supported the reconsideration of "supervisory function". They believe that supervision is an objective

function of administrative reconsideration. The problem of administrative reconsideration system lies in the closed understanding of the connotation of supervision. The administrative reconsideration supervision should be viewed rationally (Bai, 2007, 82). How do you view and understand the administrative review and supervision function rationally? At present, when the Administrative Reconsideration Law is urgently needed to be revised, it is necessary and of practical significance to re-examine the administrative reconsideration supervision function from the perspective of the socialist people's supervision theory, and discuss the value relationship of the administrative reconsideration supervision function to the perfection of the administrative reconsideration system.

1. THE THEORETICAL BASIS OF ADMINISTRATIVE RECONSIDERATION SUPERVISION FUNCTION: PEOPLE'S SUPERVISION THEORY

People's supervision theory is one of the important achievements of the sinicization of Marxism-Leninism. "It is the theory of people's supervision and control of state power by Marx, Engels, Lenin, Mao Zedong, and Deng Xiaoping. The key and essence of such theory is the people; that is, the people are the master of state power, and they have the most control over such power. People's supervision of the government is the most fundamental supervision." (Ying, 2018, p.2909; Huang, 2012, p.108; Geng, 2016, p.235)

1.1 People's Supervision Theory by Marxism-Leninism

When summing up the experience of the construction of *la Commune de Paris*, Marx and Engels clearly pointed out that "the two ways to prevent the government and organs from switching from the servants to the master of the society" are "to hand over all positions from administrative, judicial, and national education to those elected by universal suffrage, and they can impeached by the people at any time." "All public servants, regardless of the position, should only be paid with the same wages as other workers" (Marx and Engels, 1995, pp.12-13). This form of political organization, which is directly elected by the people and can be changed by the people at any time, embodies that "public servants" must be under the supervision of "social masters" at any time, that is, they must accept the supervision of the people. The power of the state comes from the people. The supervision of the people is one of the fundamental means to ensure the nature of the "public servants" of the dictatorship of the Proletariat and to ensure that the people are the masters of the nation.

In his practice of leading Russia in the revolution and construction of socialism, Lenin inherited and developed the people's supervision theory from Marx and Engels,

making it more institutionalized. On the second day of the *October Revolution*, Lenin led the Russian people enact two legislations - the *Supervision Regulations by Workers* and the *Dismissal Rights Act* - to use the legal system to guard the practice of people's supervision. He believed that "the masses should have the right to elect responsible leaders for themselves. The masses should have the right to replace them. The masses should have the right to understand and examine every detail of their activities" (Lenin, 1985, pp.143-144), and the people's supervisory power is above all principles. In the later period of Lenin's life, he tried to use the people's supervision theory to solve the increasingly bureaucratized, highly concentrated, pyramid-like power in the Soviet Union. For this reason, he envisioned a dual supervisory path, namely: "On the one hand, we will use the method of strengthening inner-party democratic centralism to change and adjust the power structure inside the pyramid; on the other hand, it is more important to add an inverted pyramid above the original pyramid, that is, the supreme people's supervision system.... Let these two pyramids be properly combined to construct a people's supervision mechanism of power operation, resulting in a new type of power balance and power restriction. We can use the powerful people's supervisory power to restrict the power of government, limit bureaucratic privileges, and prevent abuse of power" (Wang, 1994, p.15).

1.2 The Sinicization of Marxist-Leninist People's Supervision Theory

The repeated emphasis and interpretation of the importance by Mao Zedong and Deng Xiaoping on the people's supervision theory have made the Marxist-Leninist people's supervision theory compatible with the reality of the construction of China's socialism and have been sinicized.

1.2.1 People's Supervisory Theory by Mao Zedong

As is known to all, Mao Zedong's most classic interpretation of people's supervision theory was his response to escape from the historical cycle that "a country falls as abruptly and rapidly as it rises" when discussing with the famous democrat, Mr. Huang Yanpei, in Yan'an in July 1945, "We have found a new way. We can jump out of this cycle. This path is democracy. Only by letting the people supervise the government will the government keep going well. Only when everyone takes responsibility will the nation survive" (Bo, 2008, p.157). Believing in the masses and allowing the people to supervise the government is the core content of Mao Zedong's supervisory theory.

1.2.2 People's Supervisory Theory by Deng Xiaoping

Deng Xiaoping had always attached great importance to the restriction and supervision of power. He divided supervision into three aspects: "The first one is the supervision of the Party... The second is the supervision of the masses. It is necessary to increase the supervision

by the masses of the Party and the Party members. The last one is the supervision by the democratic parties and non-partisan democrats. It is necessary to increase their supervision of the Communist Party and of the Communist Party members. With these aspects of supervision, we will be more cautious” (Deng, 1994, pp.270-271). Within these three aspects of supervision, he believed that “the supervision of the masses is the most extensive and important supervision. The wide distribution of the people makes the supervision available all the time; the people are closest to the reality and are against corruption and privilege the most, and their desire to fight corruption is also the strongest” (Chen, *et al*, 2008, p.46). Inheriting Mao Zedong’s ideology on the people’s supervision theory, his biggest innovation and transcendence was that the supervision of the people must be institutionalized, legalized, and standardized. He pointed out that “there must be a supervision system to allow the masses to supervise the administration and allow the masses and the party members to supervise cadres, especially leading cadres. Anyone who engages in privilege and specialization and who has been educated and criticized and has not changed, people should have the right to report, accuse, impeach, replace, and dismiss them according to law, and demand that they be financially punished and subject to legal and disciplinary action.” (Deng, 1994, p.332) Only by providing legal means for the supervision of the people can we effectively guarantee the realization of their supervisory power and democratic rights while maintain the enthusiasm of the supervision of the people in a certain rationality and avoid the reoccurrence of an irrational wave of “supervised fanaticism”.

1.2.3 The Constitutional Expression of People’s Supervision Theory in China’s Constitution

The first and third paragraphs of Article 2, the second paragraph of Article 27, and Article 41 of the Constitution of China together form the constitutional expression of people’s supervision theory in China and the constitutional basis for the institutionalization and legislation of people’s supervision theory. These provisions are complementary and mutually reinforcing. Among them, the first and the third paragraph of Article 2 stipulate that all power belongs to the people, and the people can manage national, social, economic, and cultural affairs through various channels. This expresses the idea of people’s supervision theory from the aspect of the source and scope of supervision; Article 27 stipulates that all state organs and state staff must rely on the support of the people, always maintain close ties with the people, listen to the opinions and suggestions of the people, accept the supervision of the people, and make efforts to serve the people. These are to express the idea of people’s supervision theory from the perspective of state organs and state employees and to show that accepting the supervision by the people is the constitutional obligation of the state organs and their

staff; Article 41 emphasizes the constitutional power of citizens to supervise state organs and their staff and obtain compensation from the perspective of guaranteeing the basic rights of citizens. (Zhu, 2018)

In summary, people’s supervision theory, which was originally proposed by Marx and Engels, further improved by Lenin, and sinicized by Mao Zedong and Deng Xiaoping, is a socialist supervision theory with Chinese characteristics. It provides theoretical support for China’s improvement of the administrative legal supervision system. It is also the starting and ending point of the Chinese legal supervision system. Under the guidance of the people’s supervision theory, China should not only continue the practice of multi-dimensional supervision of legislation, administration, and judiciary, but also begin to explore top-down supervision within the state organs and the people’s bottom-up supervision of state organs. We need to design the most effective and ideal supervision system model of the human society—all power belongs to the people and full acceptance of the two-way supervision mechanism of the people’s supervision.” (Zhu, 1993, 14)

2. THE UNIQUE VALUE OF ADMINISTRATIVE RECONSIDERATION SUPERVISION FUNCTION UNDER THE VISION OF PEOPLE’S SUPERVISION THEORY

“China’s administrative reconsideration system is based on the people’s supervisory and appeal rights and the right to compensation.” (Pi, 1999, pp.79-80) In other words, the people’s supervisory power is one of the power bases which grants the administrative reconsideration system, and the people’s supervision theory is the theoretical basis for the existence of the supervision function of the administrative reconsideration. The uniqueness of China’s administrative reconsideration supervision is that it is not only self-monitoring from top to bottom within the administrative organs, but it also contains people’s supervision of the state administrative organs from the bottom up. In addition, the existence of people’s supervision has connected the internal and external supervision within the administration. It plays a key role in connecting the top and the bottom and the internal and external supervision in the process of building a “full-scale, two-way supervision mechanism for people’s supervision”, which also gives a unique value and significance of the internal administrative reconsideration.

2.1 Administrative Reconsideration Supervision Has the Attributes of People’s Supervision

2.1.1 Administrative Reconsideration Supervision is the Top-down Supervision within the Administration

Administrative supervision has different meanings from different aspects, such as supervision carried out by the

administrative organ as the main subject, or supervision by the administrative organ as the object of supervision. According to Professor Zhang Jiansheng's point of view, "administrative supervision should be expressed as 'supervising administration' in terms of its content, but since the content of 'administrative supervision' has been established in China's administrative law, the book still uses the term 'administrative supervision'" (Zhang, 2001, p.1) This article also follows this trend and expresses the meaning of "supervising administration" with the term "administrative supervision". The administrative supervision classification is different according to different classification criteria. "According to the system theory and whether the supervisory subject and the supervised object belong to the same organizational system, the supervision can be divided into two parts: internal supervision and external supervision." (Hou and Hou, 2013, p.83) Based on this standard, when the object of supervision is determined to be an administrative organ, the administrative internal supervision is the supervision that the supervisory and the supervised object both belong to the administrative organ, including the hierarchical supervision between the lower and upper levels of the administrative organ, as well as special supervision such as the audit supervision; the administrative external supervision is the supervision that the administrative organs and their staff are supervised by parties outside of the administrative agency, including the supervision of the people's congress, the supervision of the CPPCC, the judicial supervision, the supervision of the State Supervision Commission, and social supervision.

"Despite the participation of the administrative counterparts, the power of the administrative reconsideration agency to review and deal with the respondent's specific administrative actions is still based on the hierarchical affiliation of the administrative organs, and it is the administrative internal supervision." (Zhao, Fang, & Ji, 1999, p.23) Therefore, from the essence of administrative reconsideration power, the administrative reconsideration system is an internal, self-correcting supervision system. This point was confirmed in the legislative statement of the *Administrative Reconsideration Law (Draft)* submitted by the State Council for deliberation by the National People's Congress. "Administrative reconsideration is a kind of supervision system for self-correcting within administrative agencies" (Fang, 2004, p.41), which shows that administrative reconsideration supervision attributes are top-to-bottom, self-monitoring within the executive.

2.1.2 Administrative Reconsideration Supervision Has the Nature of People's Supervision from Bottom-up

According to the provisions of Article 2 of the Administrative Reconsideration Law, administrative reconsideration refers to the act of filing an application for administrative reconsideration with an administrative

organ when the legitimate rights and interests of citizens, legal persons or other organizations are violated by specific administrative acts. The act of applying for administrative reconsideration by citizens, legal persons or other organizations here is to exercise the constitutional supervision power of the people on the state administrative organs and their staff. Since administrative reconsideration is an administrative act according to the application, the administrative reconsideration supervision can only be initiated by the people from the bottom up. Although the administrative reconsideration supervision would be transferred to the specific administrative reconsideration agency after the initiation, the supervision of the people does not leave the scene. According to the provisions of Article 32 of the *Regulations for the Implementation of the Administrative Reconsideration Law*, if the administrative reconsideration applicant makes a request or the administrative reconsideration agency deems it necessary, the administrative reconsideration may be heard by means of hearing. While giving the administrative review applicant the right to hear and participate in the reconsideration process, it also makes the supervision process of administrative reconsideration under the supervision of the people. In summary, administrative reconsideration supervision has the nature of the people's supervision from bottom-up.

2.1.3 The Relationship between Top-down Self-supervision and People's Supervision within Administrative Reconsideration

According to the provisions of Article 89 (4) and (14) and Article 108 of the Constitution, the State Council uniformly leads the work of the state administrative at all levels, the local governments above the county level lead the work of their subordinate work departments and the local government at a lower level. The governments at higher level have the right to change or revoke the inappropriate decisions of their subordinate work departments and the local government at a lower level. This is "the most direct and powerful constitutional source of administrative reconsideration power" (Yang, H. and Zhu, 2014, p.28). Therefore, from either the perspective of the constitutional origin of administrative reconsideration power or the nature of the administrative reconsideration organ of its behavioral subject, the administrative reconsideration supervision behavior currently is administrative and is the administrative act of the administrative organ. According to people's supervision theory, all acts of the administrative organs should be subject to supervision from the people. Therefore, the administrative nature of administrative reconsideration supervision leads to the fact that they need to accept supervision from the people.

At the same time, the supervision of the people can provide external motivation for the effective implementation of administrative reconsideration

supervision. But this motivation cannot be provided solely by the supervision of the people. It also needs the power of administrative litigation supervision. According to the second paragraph of Article 26 of the *Administrative Procedure Law*, whether the administrative reconsideration agency changes the original administrative action or not, it will become the defendant of the corresponding administrative litigation case. This is to strengthen the supervision of administrative reconsideration through administrative litigative supervision. It, in turn, pushes the administrative reconsideration agency to make fair and just reconsideration decisions and to conduct effective reconsideration supervision.

2.2 The Unique Value of Administrative Reconsideration Supervision

The nature of the people's supervision of the administrative reconsideration supervision function gives it a unique value, which is different from other administrative supervision, administrative external supervision and other supervision methods and is embodied in the following aspects:

2.2.1 Administrative Reconsideration Supervision Breaks the Closedness of General Supervision within the Administration

Administrative internal supervision refers to "the legal supervision of the national administrative organs within itself". It can be divided into general supervision, special supervision, and functional supervision according to the standards of different supervision subjects. Among them, the general supervision refers to the supervision of higher level administrative organs based on subordination, such as filing, work report, examination and approval, request, report, etc.; special supervision refers to the implementation of supervision by administrative organs that independently exercise supervision by the law to other administrative organs and personnel, such as audit supervision; functional supervision refers to the supervision of administrative agencies that undertake certain special functions to organs that have no special affiliation with administrative agencies (Zhu, 1994, pp.245-250). From the point of view of form, the administrative reconsideration supervision belongs to the general supervision, but because the supervision is initiated differently, the supervision subject involves the people outside the administrative organ, that is, the administrative reconsideration applicant, thus making the administrative reconsideration supervision different from other general supervision.

The uniqueness of administrative reconsideration supervision over other general supervision is that it breaks the closedness of general supervision within the administration. General internal supervision includes filing, work report, examination and approval, request, report, etc. Generally speaking, the entire supervision process exists only between the internal and lower levels

of the administrative organ and has certain closedness; while the administrative reconsideration supervision is also the general administrative supervision. However, due to the existence of the applicant in administrative reconsideration, it has been incorporated into the elements outside the administrative organs, breaking the closedness of such internal supervision, and thus having the advantages that general internal supervision does not have.

First of all, the administrative reconsideration applicant's right to apply for a hearing and the right to sue for reconsideration decisions make the whole process of administrative reconsideration supervision under the supervision of the people, and, in fact, form a supervision against "administrative reconsideration supervision" and break the infinite deadly loop of "who will supervise the supervisors." This helps to reduce the risk of supervisory failure caused by the lack of independence of the supervisory body of the internal and external supervision due to the subject and object being within one organizational system. Secondly, the administrative reconsideration applicants file a "reconsideration application", which initiates the reconsideration supervision by external forces, solves the problem that other general internal supervision lacked the motivation to open the supervision actively, and reduces the possibility that internal supervision of the administrative become useless as much as possible. Finally, the administrative reconsideration supervision is initiated because of the specific administrative actions of the administrative agency infringe upon the lawful rights and interests of the applicant. Therefore, the reconsideration supervision has specific supervision objects and targets, which are "case supervision" and are more specific comparing with other general internal. Meanwhile, the administrative reconsideration supervision can also review the basis of specific administrative actions and supervise the common problems in the implementation of illegal administrative actions or after-care work, laws, regulations, and rules related to the application for administrative actions by making administrative reconsideration opinions or proposals. It helps to improve the overall effectiveness of reconsideration supervision.

2.2.2 The Anti-corruption Function of "Check Erroneous Ideas at the Outset" of Administrative Reconsideration and Supervision—Based on the Supervision of the State Supervision Commission

As Deng Xiaoping pointed out in his discussion of the people's supervision theory: the people are the closest to the reality, and they are also deeply aware of the phenomenon of corruption and privilege, and thus their desire for anti-corruption is also the strongest. We should use the administrative reconsideration supervision with the people's supervisory power as the main source of power and let the legalization of the people's supervision play a certain role in the anti-corruption work.

Instructions on the Supervision Law of the People's Republic of China (Draft) states that "the goal of the reform is to integrate the resources of anti-corruption, strengthen the centralized and unified leadership of anti-corruption work, and build a centralized, unified, authoritative, and efficient national inspection with Chinese characteristics. It can be seen that the State Supervision Commission is the national anti-corruption work organization, and one of its priorities is to deepen the anti-corruption work. Therefore, this article uses the State Supervision Commission as a reference to observe the independent value of administrative reconsideration supervision in the field of anti-corruption work. Compared with the national supervisory committee as the mainstay in China's anti-corruption tide and the integration of China's anti-corruption superiority, the role of administrative reconsideration supervision in anti-corruption work is more to check erroneous ideas at the outset. "Corruption of public power is an extreme manifestation of abuse of power and is not an alienation of all powers" (Wei, 2017), which means that all-round anti-corruption work not only needs to punish the "corruption cancer" that is harmful, but also needs to plan ahead. We need to correct the behavior of alienation of power with potential corruption risks and eliminate corruption in the beginning. The criteria for administrative reconsideration supervision include legality and reasonableness and has unique advantages in exercising administrative powers that are exercising "non-compliance" such as slightly illegal or legal but unreasonable.

First of all, the people are the most sensitive "radars" of anti-corruption. The administrative reconsideration supervision initiated by the administrative counterparts can be exposed to small or even administrative actions that have not yet constituted corruption. Secondly, administrative reconsideration supervision is self-correction and supervision within the administrative organs. It is more extensive and flexible in terms of the scope of supervision, the methods of supervision, and punishment. For example, administrative reconsideration cannot only supervise the administrative actions applied for, but also may supervise the illegal acts related to the administrative actions being applied and abstract administrative actions on which the administrative actions are applied, and may directly revoke, change or confirm the illegal reconsideration decisions for specific administrative actions that are obviously inappropriate. Finally, administrative reconsideration supervision is a whole supervision process. Article 3 (6) of the *Regulations on the Implementation of Administrative Reconsideration Law* requires the administrative reconsideration agency to study the problems found in the administrative reconsideration work and to promptly propose improvements to the relevant organs. The administrative reconsideration agency reports to achieve the preventive effect and achieve maximum benefits with minimal

supervision costs. The embankment of a thousand miles was destroyed by the ant colony, and the anti-corruption "check erroneous ideas at the outset" function of the administrative reconsideration supervision should receive due attention.

2.2.3 Administrative Reconsideration Supervision Connects Internal and External Legal Supervision

Due to the existence of the administrative reconsideration applicant, that is, the supervision of the people, the administrative reconsideration supervision has become a bridge that connects the internal and external legal supervision. According to the provisions of Article 45 of the *Administrative Litigation Law*, if an administrative reconsideration decision is dissatisfied with the administrative reconsideration decision (except for a final reconsideration decision), it may file an administrative lawsuit with the people's court within a certain period after the decision is made, which initiates the supervision of the judicial organs on the exercise of public power by the administrative organs. In conjunction with the provisions of Article 26 of the *Administrative Procedure Law*, the administrative reconsideration agency shall act as a joint defendant so that the internal reconsideration of the administrative reconsideration is still under the external supervision of the people and the judiciary even after the reconsideration process is over, thus connecting the internal and external supervision of the administrative system and allowing the administrative organ to be under two-way supervision.

CONCLUSION

"Supervision is the universal need of people in social life. People who want to live in the collective must be supervised. Socrates once said: 'A life without supervision is worthless.'" (Wu, Yuan, & Sun, 2007, p.2) From this, it can be said that administrative reconsideration is needed because of its supervisory function. It can even be said that the supervision function is, to some extent, the root cause of the system--"The national will and administrative enforcement of the administrative activity itself determine the country that holds the executive power. which is need for an administrative agency to establish a self-disciplined monitoring mechanism within its system which is the root cause of the administrative reconsideration system" (Zhao, et al, 1999, p.23). Therefore, the supervision function is essential and indispensable for the administrative reconsideration system, and the people's supervision attribute of administrative reconsideration makes it an important part of the comprehensive two-way administrative legal supervision system. The socialist people's supervision theory discussed in this paper gives it a unique value. If the administrative reconsideration supervision function is effectively played in practice, the system will need to be revised and a series of scientific,

perfecting, and supporting system design will be needed in the future. For example, the administrative review object's hearing rights, the effectiveness of the administrative reconsideration opinions and proposals are important reconsideration supervision channels.

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