

Law-Based Administration: The Key to Building a Rule of Law Government

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Abstract

Law-based administration is a focal point as well as a difficult point in the implementation of the fundamental principle of governing the country according to the law; it is also a key point in the construction of a rule of law government. For administrative organs at all levels, properly practicing law-based administration is not only an inevitable requirement of the development of socialist democracy and leadership by the people but also a prerequisite to and basis of the building of a rule of law government and a harmonious society.

Key words: Law-based administration; Supervisory mechanism; Law enforcement responsibility

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INTRODUCTION

Law-based administration is the concrete implementation of the fundamental principle of governing the country according to the law in the administrative efforts of the government; it is directly related to the vital interests of the people as well as the credibility of the party and

the government. General Secretary of the Communist Party of China (CPC) Xi Jinping has pointed out that “administrative organs are an important agent in the enforcement of laws and regulations and should take the lead in strictly enforcing the law, safeguarding public interests and the rights and interests of the people, and maintaining social order. Law-enforcement agents must be faithful to the law.” The 4th Plenary Session of the 18th CPC Central Committee also proposed that to firmly uphold the rule of law, we should first firmly uphold the authority of the Constitution and that to adhere to law-based administration, we should first adhere to Constitution-based administration. Therefore, the government should fulfill its functions in all aspects under the rule of law, further advance law-based administration, and accelerate the building of a rule of law government characterized by scientific delegation of responsibilities, determination of authority and duties by law, strict law enforcement, openness and fairness, integrity and efficiency, law-abidingness and honesty. Moreover, General Secretary Xi Jinping pointed out that “officials and cadres at all levels should improve the abilities to use a rule of law mentality and method to deepen reforms, promote development, resolve conflicts, and to maintain stability. They should work hard to promote the creation of a favorable rule of law environment in which all affairs are handled according to the law, people would resort to the law when issues arise, problems are solved under the rule of law, and conflicts are resolved according to the law; they should stay on the rule of law track in all work.” The so-called rule of law mentality is an understanding and awareness of the rule of law with an emphasis on a sense of awe of the Constitution and the laws; all affairs should be handled by law in accordance with law-prescribed authority and procedures with constant adherence to the interdependence of power and duty, supervision of the exercising of power, prosecution in cases of violation, and compensation in cases of infringement. Governments at

all levels and their staff should take the lead in abiding by the Constitution and the laws, overcoming hurdles in the reforms as well as improving the welfare of the people and social justice under the rule of law. In addition, the construction of a rule of law government requires conscious acceptance of supervision of the people. The subject consciousness and the rule of law consciousness of society as a whole should be further cultivated. As was emphasized during the 4th Plenary Session of the 18th CPC Central Committee, we must “see to it that the laws are mastered, obeyed, and used by the people”. Only when the broad masses of the people actively and voluntarily act as the agent in the supervision of law enforcement can we truly succeed in the building of a rule of law government.

1. ESTABLISH A CORRECT OUTLOOK ON POWER, BUILD HIGH-QUALITY LAW ENFORCEMENT TEAMS, ENHANCE PROFICIENCY IN LAW ENFORCEMENT

Governments at all levels and all administrative law enforcement organs should pay special attention to the ideological construction, organizational construction, and style construction of law enforcement teams, provide them with adequate education in ideology, laws and policies, and work ethics, and offer proper professional and technical training. Those who have not received such training or have failed in the exit exam following such training are, with no exception, ineligible to perform job duties. Law enforcement officials who are lacking in political quality and who have been accused of serious violations of laws and regulations should be removed from duty and be relocated with no exception. Contract workers or temporary workers who are assigned law enforcement duties must be replaced. Moreover, governments should also gradually solve such problems as the lack of equipment, personnel, and funding so as to ensure smooth and effective operation of administrative law enforcement.

The key to law-based administration is the prevention of alienation and abuse of power. To change the outlook on power is to shift from the traditional concepts of “omnipotent government”, “absolute power”, and “whoever is in charge has the final say” to the rule of law concepts of “limited government”, “limited power”, and “supremacy of law”, to establish the concept that “administration is management, management is service”. We should adhere in particular to the principle of “limited public power” because it is the core of the rule of law, the only means by which civil rights, relatively weak compared with the large state machine, be safeguarded so that true democracy of the people can be achieved. We should firmly establish such an ideology, yet these concepts do not fall from the sky, nor can they be simply

instilled. Correct understanding can only come from practice; only through an iterative learning process of practice, understanding, more practice, and better understanding can understanding be deepened and beliefs be strengthened. In short, habits and environments are particularly important in the construction of a favorable administrative law enforcement culture. Therefore, we must advocate the construction of new types of administrative law enforcement culture and devote great efforts to facilitating the shift in administrative consciousness, renewal of administrative values, innovation in administrative thinking, and cultivation of administrative morals so that the concept of law-based administration would be ingrained in everyone’s mind in the bigger environment of administrative culture construction and would in turn become the source of power for the practice of law-based administration. Moreover, the concept of law-based administration has acquired richer connotations in the contemporary society. A new administrative concept advocating deregulation and emphasizing service and collaboration is being gradually ingrained in our minds and becoming reality. Thus, governments at all levels should establish the concept of “administration is management, management is service” in the shift from “regulatory administration” to “service administration”, establish the concept of “ultra vires invalid” in the shift from “authoritative administration” to “democratic administration”, and establish the rule of law concept in the shift from “rule of man administration” to “rule of law administration”.

2. ENSURE RIGOR IN THE FORMULATION, REVIEW, AND RECORD-KEEPING OF NORMATIVE DOCUMENTS

Normative documents are the substantial basis for administrative law enforcement; it is an important measure of law-based administration to ensure that administrative organs formulate normative documents in accordance with laws and regulations. Thus, all administrative organs should strictly follow relevant requirements and be conscientious in the formulation, submission, record-keeping, and review of normative documents. In the process of formulating normative documents, rights and duties delineated cannot contradict laws, regulations, and rules, government functions and authority stipulated cannot extend beyond those prescribed by laws, regulations, and rules, and procedures and specifications of the documents should also meet relevant requirements. Once formulated, normative documents should be discussed at the mayor’s office meetings and reviewed by the legal department as the gate keeper; precautions should be taken against a branch supervisor or secretary-general signing off on a document, and divided policies from various sources should be avoided. Upon

completion, normative documents should be presented in public as well as put on record and reviewed promptly in accordance with relevant provisions.

We should establish and perfect the system for the revision and abolishment of administrative rules and regulations as well as the system for periodic sorting through and purging regulatory and normative documents as needed. To meet the need for perfecting the socialist market economy, further opening to the outside world, and comprehensive development of our society, we should revise or abolish current administrative rules and regulations in an opportune manner and thus effectively resolve contradictions and conflicts among legal norms. Once regulatory and normative documents take effect, formulation agencies and implementation agencies should periodically assess their effect. Implementation agencies should submit assessment reports to formulation agencies, and formulation agencies should periodically sort through and purge regulatory and normative documents as needed.

3. WE MUST SAFEGUARD CITIZENS' RIGHT TO KNOW AND EXERCISE ADMINISTRATIVE POWER IN A LEGITIMATE AND REASONABLE MANNER

In modern day countries, openness in government affairs and the safeguarding of citizens' right to know is not only a prerequisite to realizing the individual right to life but also a cornerstone of establishing a democratic society and ensuring that citizens are masters in managing the affairs of their own country and that they participate to the greatest extent possible in state affairs. Further, it is a useful remedy against corruption. Sunlight is the best disinfectant; the more transparent a government is, the more incorruptible it is and the better it is able to establish the concept of safeguarding human rights. Open government, government online, as well as the hearing system, informing system, and so forth adopted by some administrative organs this year are all specific measures of openness in government affairs and the safeguarding of citizens' right to know. With further transformation of government functions such as the establishment and perfection of a series of systems including the administrative examination and approval system and government procurement system, it will gradually become a legal obligation for the government to voluntarily inform the public or provide relevant information and the public's desire to know will also become a right guaranteed by law. Administrative openness and transparency will provide more favorable conditions for the strengthening and perfection of an administrative supervisory mechanism and lay more solid foundations for the implementation of law-based administration. In other words, there will be a

shift from "authoritative administration" to "democratic administration" and the concept of "ultra vires invalid" will be established.

Administrative power is the most dynamic and widespread form of state power; it is also the kind of power that has the most direct influence on politics, economy, society, and citizens' democratic rights and vital interests. These characteristics of administrative power determine that the focus and essence of law-based administration are law-based "administration of the officials" and not "of the people", law-based "administration of the powers" and not "of affairs". As a profound revolution in the state's model of management, law-based administration must first be legitimate in various aspects including subject, range, content, procedure, and mode. However, in a time of continuous economic development and rapid expansion of the scope of administrative discretion, a mere emphasis on administration and legitimacy in law-based administration is not sufficient; what also needs to be stressed is for the administration to be reasonable. For administrative law enforcement agencies in particular, whether it can perform its law enforcement function in a reasonable manner under the premise of legitimacy, particularly whether it can appropriately exercise administrative discretion, is a real test of an agency's law enforcement proficiency and service consciousness.

4. PERFECT SUPERVISORY MECHANISMS, ELIMINATE SUPERVISION BLIND SPOTS, ENSURE LEGITIMACY IN LAW ENFORCEMENT ACTIVITIES

For internal supervision, we should perfect the accountability system and corresponding operation methods as well as further improve the scope and level of administrative law enforcement responsibilities so as to truly achieve "legalization of law enforcement authority, explicitness of law enforcement responsibilities, openness of law enforcement procedures, standardization of law enforcement activities, and systemization of law enforcement supervision". In addition, we should pay particular attention to implementation: when problems arise, we need to be serious and conscientious in ascertaining accountability and resolving the matter with zero tolerance; we should use systems as restraints on power and ensure that law enforcement subjects and officials faithfully perform their duties in strict accordance with laws, rules, and regulations. For external supervision, local people's congresses at all levels should intensify supervision over law enforcement with a focus on difficult points and hot spots, strengthen the working relationships between various operating committees and corresponding law enforcement agencies, follow law enforcement

procedures and norms as specified by administrative organs in submission and record keeping, be debriefed by corresponding organs on their law enforcement activities, and intensify daily supervision. They should also actively explore and practice new methods of supervision such as individual case supervision as well as intensify supervision over law enforcement activities that have significant impacts. In addition, they should stay in close contact with the general public, intensify supervision by news media and public opinion, and ensure that laws, rules, and regulations are properly implemented.

Moreover, in China, in cases of administrative activities in violation of law, the administrative counterpart would make an appeal through administrative litigation to the people's court for judicial review and determination of the legal responsibility of the administrative subject in violation of law. This is smoother than any other path to effective legal supervision of administrative activities. The administrative litigation system to some extent sets judicial power in opposition to executive power through the form of law. This opposing power is much more effective than any other power in the balancing, checking, and supervision of executive power; it plays a strong supervisory role in the proper execution of administrative power. Therefore, judicial review of administrative activities must be intensified. To start with, we need to perfect and reform the judicial administration system, grant the people's courts equal status with the governments, and ensure organizational and structural independence of the people's courts. Moreover, high quality and integrity of the judges should be guaranteed, judicial corruption should be eradicated, and judicial authority should be established; all these require that we establish truly independent, authoritative judicial power and develop means for quality judge selection through the perfection of *the Organic Law of the People's Courts* of the People's Republic of China, *the Judges Law* of the People's Republic of China and other relevant laws, thereby practically ensuring law-based administration through the restraints placed by judicial power on executive power.

5. PERFECT THE LAW ENFORCEMENT RESPONSIBILITY SYSTEM, ENSURE INVESTIGATION AND PROSECUTION OF VIOLATIONS OF LAW, SAFEGUARD LAW-BASED ADMINISTRATION

It is a basic requirement of the rule of law for rights and obligations to be consistent and for power and responsibility to be unified. When they are performing their job duties, law enforcement officials should be held accountable for any major law enforcement mistakes that they may make due to intentional or accidental

violations of laws, rules and regulations, and they should be investigated and prosecuted accordingly. Hence, we should conscientiously implement the state compensation system and misjudged case investigation system, use systems to regulate and restrain law enforcement officials' conduct on the job, adopt the law enforcement responsibility system and misjudged case investigation system, advocate and promote openness in government affairs, openness in law enforcement procedures, and openness in operation, be receptive to the supervision of the general public, and vigorously promote law-based administration.

We should innovate upon review and assessment mechanisms as well as intensify supervision and restraints on administrative law enforcement activities. We need to place equal emphasis on internal assessment and external review, use such methods as the combination of explicit investigation and unannounced visits, the combination of the specific and the general, the combination of regional systems and central systems, and the combination of the internal and the external in conducting reviews and assessment, and include the results of the reviews in the governments' objective management. We must strengthen the construction of relevant supervisory mechanisms and establish a long-term mechanism to implement the administrative law enforcement responsibility system.

We must implement the administrative law enforcement responsibility system, rearrange and further clarify the internal hierarchical management functions and scope of authority of administrative organs, and build a strict workflow from law enforcement duties to supervisory activities so that there is a mechanism for ensuring standardized law enforcement, law enforcement supervision will shift from passive supervision of the outcome to precautionary supervision of the process and from sports-style abrupt supervision to long-term daily supervision, the effect of supervision over standardized law enforcement will be greatly improved, and the improvement of administrative functions will be eventually achieved. We should establish a long-term mechanism for the administrative law enforcement responsibility system, demand clearly defined lines of accountability between and among administrative organs, determine through analysis the optimal hierarchical level where responsibility lies and delegate authority accordingly so that duties and authority being prescribed by law, law-based administration, effective supervision, efficiency and convenience for the people can be achieved.

As proved by practice, the administrative law enforcement responsibility system has already demonstrated some vigor. However, there remain some issues warranting further investigation, that is, how we can truly ascertain law enforcement accountability, transforming the law enforcement responsibility system

from a form to reality. With the continuous deepening of work in this realm, the perfection of this system will undoubtedly play an even more significant role in promoting a rule of law government.

CONCLUSION

Law-based administration is an important component of governing the country according to the law; to a great extent it plays a decisive role in realizing governing the country under the rule of law. With the continuous advancement in governing the country in accordance with the law, legal consciousness and rule of law mentality of the masses are being increasingly strengthened, the whole society's aspiration for a rule of law government is becoming stronger and stronger, and the new circumstances have also placed new and higher demands on law-based administration by

governments and governmental organs at all levels. Law-based administration, managing the government by strict standards, and building an incorruptible, diligent, pragmatic, and highly efficient rule of law government has become a call of the times and an inevitable choice in the growth and development of the Chinese nation.

REFERENCES

- Jiang, M. (2004). Some thoughts on building a rule of law government. *Law Forum*, 4.
- Ma, H. (2011). Advancing law-based administration, building a rule of law government. *China Civil Affairs*, 2.
- Wen, Z. (2002). *On the construction of a rule of law government: Research on the theory and practice of law-based administration*. Beijing: Law Press China.
- Ying, S., & Ma, H. (2014). An assessment report on the Chinese rule of law government. *Administrative Law Review*, 2.