

Study on the Adjustment Procedures of Administrative Division in China: From the Perspective of Text Analysis

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Abstract

Driven by new urbanization strategy, the administrative division becomes the hot point of public view. However, due to the absence of the legal procedures, in the process of administrative division adjustment, some local people's appeals have not been responded, which sometimes led to group incidents against social stability. In order to meet the requirements to comprehensively promote the rule of law, the 3th plenary session of 18th CPC Central Committee proposed strict procedures of administrative division adjustment programs, and the 4th Plenary Session proposed to improve the decision-making mechanism in accordance with the law. After carefully combing laws and regulations promulgated by the central and local governments at all levels or Ministry of Civil Affairs, we found that there are many deficiencies in the legal effect, legislative quality, procedures specification, follow-up mechanism and so on. This paper, from the perspective of text analysis, and based on careful reviews, analysis and assessment of the current procedural provisions, gives suggestion of improving the adjustment procedure of administrative division, and provides reference for the legislation of administrative division in the future in the connection of administrative law theory and administrative procedure system.

Key words: Administrative division; Procedures; Text analysis

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INTRODUCTION

Administrative division refers to the division of the administrative regions and the power of the state, which is an important form of state structure, and the legal basis for the space of local government governance, and also is the premise and foundation of the local administrative system and economic system (Dai, 2009, p.1). The administrative division adjustment refers to the behavior of changing the part of the administrative division by the National People's Congress, the State Council or the provincial people's government according to a certain procedure¹. The 4th plenary session of 18th CPC Central Committee proposed to improve the adjustment of administrative procedure. Before there was no special procedural provisions on administrative division adjustment, only sporadically appeared in several regulations and normative documents of the central and the local government. The details are as follows:

1. THE CENTRAL GOVERNMENT PROVISIONS ON THE ADJUSTMENT PROCEDURES OF ADMINISTRATIVE DIVISION

The relevant provisions of the administrative division adjustment in China are deficient, and the highest level of effectiveness is an administrative regulation promulgated in 1985. Other provisions scattered in normative documents issued by the State Council or the Ministry of Civil Affairs (formerly known as the Ministry of the Interior) acting as a functional department responsible for the examination and approval of the administrative division adjustment. Specifically as follows:

¹ See *The provisions of the State Council on administrative division*, (January 15, 1985).

1.1 The Provisions on the Authority of Administrative Division Adjustment

In order to strengthen the construction of state power and administrative management, in the initial of the People's Republic of China (PRC), the Government Administration Council and the Ministry of the Interior issued a series of documents. For example, the Provisions on the Unification of Administrative Division Change Permissions in 1949 and the Instructions of Ministry of the Interior on the Change of Administrative Units At or Above the County Level Shall Be Reported for the Approval of the CPC Central Committee in 1950 both issued by the Ministry of Interior, stipulated relevant authority of the administrative division change and laid a foundation for the legislative system of administrative division in New China. In 1952, the Government Administration Council promulgated the Provisions on Handling the Administrative Division Change Matters, which is the first central file promulgated by the Government Administration Council on the administrative division setting-up, stipulating the examination and approval authority on setting-up administrative division of the Government Administration Council of the Central People's Government and the people's government at the provincial level². Thereafter, in a long period of time, administrative division management experienced a low tide, and the relevant documents were seldom issued. Until after the Constitution of China restipulated the setting-up of administrative division in 1982, the State Council issued the Provisions of the State Council on the Administration of Administrative Division in 1985. So far, it is the only one administrative regulations at the central level concerning the setting-up of administrative division and regulates the principle, permissions and procedures of the setting-up of administrative division systematically, which also plays a key role on the legal system construction of administrative division.

1.2 The Provisions on the Administrative Division Setting-Up

Such kind of provisions mainly reflected in 1961—the State Council promulgated the Notice of the Adjustment of Administrative Division Must Consult with the Masses, which provided principles of “being conducive to the production, being conducive to unity, being convenient for the masses and being convenient for the leadership”³ on administrative division adjustment. It also explicitly proposes that in the process of adjustment of administrative division, “all must pay attention, by various means, to solicit the opinions of the local people or representatives of the masses and cadres”⁴.

² See *Provisions On Handling The Administrative Division Change Matters* (November 8, 1952).

³ See *Notice of the Adjustment of Administrative Division Must Consult with the Masses* (August 19, 1961).

⁴ *Ibid.*

Furthermore, it requires that the adjusted administrative division shall be dealt with according to the opinions of the masses, “Those who did not divide reasonable enough, according to opinions of the masses, should be redivided; those who did not change again after the division, but also should be patiently explained to the masses.”⁵ Meanwhile, the Notice ensures the channel smooth for masses to express their views and strictly forbids to blow and suppress different opinions. In 2000, the Ministry of Civil Affairs issued the Notice on Doing A Good Job on the Administrative Division Adjustment Carefully and Steadily which stipulated that “the adjustment of administrative division should be cautious, and should be fully demonstrated and scientific decision-making”⁶, “Adhering to the administration by law, administrative division adjustment matters should be conducted strictly according to the approval authority and approval procedures”⁷, “In the process of the implementation of adjustment of administrative division, it is required to strengthen leadership, do meticulous work and ensure social stability”⁸ and so on. The relevant procedures of the adjustment of administrative division are standardized in the Notice.

1.3 The Special Provisions of the Ministry of Civil Affairs for Certain Issues

As the department responsible for the adjustment of administrative division, the Ministry of Civil Affairs, for the specific issues appearing during the adjustment of administrative division, has promulgated some normative documents. For example, the Ministry of Civil Affairs issued the Notice on the Relevant Issues Concerning the Management of Administrative Division in 1994 which stipulated the responsibilities of local civil affairs departments and the approval sequence and so on. In 2008, the Ministry of Civil Affairs also issued the Notice of the Ministry of Civil Affairs on Strengthening the Management of Government Resident Relocation which required that “all localities should fully understand the importance of government resident relocation, take it as an important task for the administrative division management, strengthen a leadership cogently, carry out the management according to law strictly.

According to the scientific development concept, for being conducive to local economic and social development, conducive to social management and public services, conducive to the city's long-term development, conducive to saving and intensive use of land, conducive to social stability and unity, all localities should attach great importance to, cautiously and strictly, control the

⁵ *Ibid.*

⁶ See *Notice on Doing A Good Job on the Administrative Division Adjustment Carefully and Steadily* (July 6, 2000)

⁷ *Ibid.*

⁸ *Ibid.*

government resident relocation.”⁹ Meanwhile, it required to clarify the authority of government resident relocation, standardize the resident migration management, and carry out inspections of government resident relocation. In 2010, considering the emergence of non-standard formulations like “town-level city” on the local level, the Ministry of Civil Affairs issued the Notice on the related Issues Concerning Normalizing the Formulation of the Organizational System of Administrative Division which required strict formulation of the organizational system of administrative division, etc..

2. THE LOCAL GOVERNMENT PROVISIONS ON THE ADJUSTMENT PROCEDURES OF ADMINISTRATIVE DIVISION

Not only the central government and the Ministry of Civil Affairs have issued the relevant provisions on administrative division but also local governments have issued a number of government provisions and normative documents on administrative division. But, the latter ones include a small quantity and the contents of them are less directly related to the adjustment procedures. Besides, contents of most provisions are too simple, which are just the reaffirmation and supplements of the Provisions of the State Council on the Administration of Administrative Division. They are respectively the Notice of Sichuan Provincial Government on Carrying out the Provisions of the State Council on the Administration of Administrative Division in 1985, the Measures of Tianjin Municipality for the Administration of Administrative Division in 1987, the Measures of Shandong Province on the Administration of Administrative Division in 1988, the Handling Methods of Ningxia Hui Nationality Autonomous Region on Administration of Administrative Division and Border Disputes in 1991 (abolished), the Notice of Hubei Provincial Government on the Provincial Administrative Division in 1995, the Provisions of Nanjing Municipality on the Administration of Administrative Division in 1997, the Notice of the General Office of Shanxi Provincial Government on Strengthening the administration of Administrative Division in 2008, the Notice of People’s Government of the Guangxi Zhuang Nationality Autonomous Region on Further Strengthening the Administration of Administrative Division in 2008, the Notice of General Office of the Xinjiang Uygur Autonomous Region Government on Strengthening the Administrative Division Administration in Autonomous Regions in 2008, the Notice of Civil Affairs Department of Henan Province on Further Strengthening the

Administration of Administrative Division in 2009, the Guiding Opinions of Zhejiang Civil Affairs Bureau on Further Standardizing the Application Procedures of Administrative Division Adjustment in 2013, etc.. After summarizing and sorting out the 11 texts above, including four local government regulations and seven normative documents, some rules and issues can be found out.

2.1 Names and Validity of Relevant Provisions of the Administrative Division

Observing the existing regulations, their names are inconsistent and they differ in their effectiveness. The majority of the texts are named “Notice” (6 in all), such as the Notice of Sichuan Provincial Government on Carrying out the Provisions of the State Council on the Administration of Administrative Division, the Notice of Hubei Provincial Government on the Provincial Administrative Division, the Notice of Civil Affairs Department of Henan Province on Further Strengthening the Administration of Administrative Division, etc.. Some texts exist in the form of “Provision”, “Measure”, and so on, such as the Provisions of Nanjing Municipality on the Administration of Administrative Division, the Provisions of Tianjing Municipality on the Administration of Administrative Division, the Measures of Shandong Province on the Administration of Administrative Division. Zhejiang province issued its latest document in the form of “Guiding Opinions”.

From the aspect of the effectiveness, documents are different from each other. Among the documents of different local governments, only three of them are provincial government provisions, those are the Provisions of Tianjin Municipality on the Administration of Administrative Division, the Measures of Shandong Province on the Administration of Administrative Division and the Handling Methods of Ningxia Hui Nationality Autonomous Region on Administration of Administrative Division and Border Disputes. As a major city, provisions issued by the Nanjing Municipal People’s Government also belong to local government regulations. The others all exist in the form of “Notice” and “Guiding Opinions”, which belong to normative documents formulated by the government at all levels.

2.2 Contents and Forms of Relevant Provisions of the Administrative Division

Currently existing provisions are very simple. The document including the maximum number of articles comes to the Handling Methods of Ningxia Hui Nationality Autonomous Region on Administration of Administrative Division and Border Disputes (abolished)¹⁰, with a total of 25 articles, which regulates the contents of the administrative division, the principle of setting-

⁹ See *Notice of the Ministry of Civil Affairs on Strengthening the Management of Government Resident Relocation* (2008).

¹⁰ See *the Handling Methods of Ningxia Hui Nationality Autonomous Region on Administration of Administrative Division and Border Disputes*. (1991).

up administrative division, the division of the approval authority, the functions of civil affairs department, contents of consulting, penalty regulations, etc. Moreover, it takes the form of sections and entries, which is relatively standardized. Documents issued by Tianjin, Shandong, Nanjing and other local governments all include more than 10 articles and the contents and forms are relatively reasonable, referring to the basic principles of the administrative division, the division of the approval authority, contents of consulting and so on. Among those, Tianjin and Nanjing's documents are in the form of entry list, which are in line with the formal requirements of local government regulations. Other normative documents also stipulate the division of the approval authority, Shaanxi, Guangxi, Xinjiang, Henan's documents also set rules for contents of instructions; in the attachment of Zhejiang's "Guiding Opinions", application materials of administrative division adjustment are clearly listed.

In all the above documents, there are some principle languages, for example, the oath language like "increase awareness", "the overall situation", "shall", "shall not"¹¹ appear in the Notice of Hubei Provincial Government on the Provincial Administrative Division, which are strongly principled but in lack of enforceability.

2.3 Start-Up Procedures of Administrative Division Adjustment

The provisions about legal procedures for administrative division adjustment are not too many. At present, only the Notice of Civil Affairs Department of Henan Province on Further Strengthening the Administration of Administrative Division, the Guiding Opinions of Zhejiang Civil Affairs Bureau on Further Standardizing the Application Procedures of Administrative Division Adjustment have rules for expert demonstration system. The Provisions of Tianjin Municipality on the Administration of Administrative Division, the Measures of Shandong Province on the Administration of Administrative Division, the Provisions of Nanjing Municipality on the Administration of Administrative Division and other documents set rules of soliciting opinions of the local government. The Guiding Opinions of Zhejiang Civil Affairs Bureau on Further Standardizing the Application Procedures of Administrative Division Adjustment is the only document which requests social risk assessment.

3. COMMENTING ON THE PROCEDURAL PROVISIONS OF ADMINISTRATIVE DIVISION ADJUSTMENT

Through the analysis and combing above, we can find that the documents of Chinese administrative division

¹¹ See the Notice of Hubei Provincial Government on the Provincial Administrative Division. (1995).

legal system are of some dominant problems such as small quantity low level, weak enforcement, imperfect content. They are mainly reflected as follows:

3.1 The Incomplete Form and Low Potency Levels

First, there are a small number of relevant documents and their structures are irrational. According to incomplete statistics, there are only more than 10 provisions relating to administrative division. Nationally, most of the provinces, autonomous regions and municipalities have no local laws and regulations relating to administrative division setting-up program in addition to the enactment in 1997 of the Nanjing provisions on administration of administrative division, cities and counties almost have no regulations on administrative division setting-up program. Meanwhile, most of the existing files have the problem of the irrational structure. Apart from a small part of the provisions involving chapters and entries, most of the documents have simple content and a few entries. For instance, the Notices of Hubei Provincial People's Government on the work of the related issues of province's administrative division and the Notices of Guangxi Zhuang Autonomous Region People's Government on Further Strengthening the Administration of Administrative Division only have four provisions, the Notices of Sichuan Provincial People's Government to Implement the Provisions of State Council on Administration of Administrative Division only involves five provisions, it is not conducive to standardize administrative division setting-up work. Second, some relevant documents are of low enforcement. Despite the current Constitution has a number of special provisions in respect of administrative division system, but the relevant provisions are more principled. Meanwhile, China has yet to enact the Administrative Division Law, and lacks the legislation on the management of administrative division, the only administrative regulation, the Provisions on the administrative division management, is promulgated by the State Council in 1985. Meanwhile, there is no local regulations in regard to the administrative division, and even the local government rules are rare (only four documents), most of them are normative documents and have effectiveness of low grade. Especially, civil affairs departments are the main departments to draft and issue these documents, with the result that they have little effect on local governments who play a role in decision-making. Meanwhile, due to the low effectiveness level of the administrative division laws and regulations, especially due to the content difference among department regulations, local regulations and the rules of the local governments, and lack of uniformity and fragmentation, it increases confusion of the administrative division management.

3.2 Poor Quality of Legislation

First, relevant legislation was enacted a long time ago, and their content lagged behind comparatively. The Provisions of the State Council on the Administration

of Administrative Division (the State Council released [1985] No. 8) enacted in 1985, nearly 30 years ago, have not been revised. Other relevant documents were mostly enacted in the 1980s and 1990s, few documents (only five documents) were enacted after 2000. With the rapid economic and social development, with the communist party and government organs continuously improving the requirements of legit, scientific and democratic decision-making, relevant provisions can not meet the need of social and economic development, particularly the need of administrative division management which brought about an increasingly serious problem. Second, the regulations do not contain a comprehensive administrative division. The Provisions of the State Council on the Administration of Administrative Division, for example, is the only administrative regulations, and the legal basis for the administration of administrative division. However, this provision is not comprehensive, and causes that part of the work can not be successfully carried out, or have no legal basis in the administration process of the administrative division. For instance, it provides that the “significant change”¹² of counties or cities’ administrative region boundaries shall be examined and approved by the State Council. The “partial change”¹³ of counties or cities’ administrative region shall be examined and approved by the provinces, autonomous regions and municipalities authorized by the State Council. Because “significant changes” and “partial change” can not be clearly defined, it is difficult to operate in practice, and this situation influences the authority of the administrative division setting-up.

3.3 The Main Procedure Is Imperfect

The Fourth Plenary Session of the 18th Central Committee of the Communist Party of China pointed out that

Making the public participation, expert argumentation, risk assessment, the legitimacy review, collective discussion and decision as the legal procedures of major administrative decision-making, to ensure the decision-making system scientific, due process, process public and responsibility clear.

But at present most of the laws and regulations in administrative legal system are lack of procedural provisions in the regulations and normative documents, and democratic decision-making system has not been established. Expert argumentation is the precondition of scientific adjustment of administrative division, but now in addition to the Notice of Civil Affairs Department of Henan Province on Further Strengthening Administrative Division Administration which provides that strengthen the planning and demonstration work of the administrative division adjustment, and establish

and improve the system of expert argumentation¹⁴, there are not any other documents concerning the system of expert argumentation and consulting. Social stability risk assessment is the guarantee for the implementation of administrative division adjustment smoothly, but except the Guiding Opinions of Zhejiang Civil Affairs Bureau on Further Standardizing the Application Procedures of Administrative Division Adjustment, enacted in 2003, there are not any other documents concerning the social stability risk assessment mechanism. As for soliciting advice, although some documents required respect for opinions of the masses in the process of adjustment of administrative division, the related mechanisms have not yet been established.

3.3 The Liability Mechanism Is Not Perfect

The report to the 18th National Congress of the Communist Party of China also calls for “establishing and perfecting the accountability mechanism and error correction mechanism”. But the relevant mechanism for the administrative division adjustment is not perfect. Although there are some provisions regulating responsibility for illegal administrative division adjustment, like the Measures of Tianjin Municipality for the Administration of Administrative Division, the Handing Methods of Ningxia Hui Nationality Autonomous Region on Administration of Administrative Division and Border Disputes, the Provisions of Nanjing Municipality on the Administration of Administrative Division, the Notice of General Office of the Xinjiang Uygur Autonomous Region Government on Strengthening the Administrative Division Administration in Autonomous Regions, and the Notice of Civil Affairs Department of Henan Province on Further Strengthening the Administration of Administrative Division and so on, they are merely principles and general clauses. The provisions of Tianjin, Xinjiang and Henan only stipulated the administrative responsibility, although the illegal deeds in Ningxia and Nanjing shall be submitted to the judicial authorities and be investigated for criminal responsibility, such kind of provisions are still general. As for the dispute settlement mechanism, any of the provisions are not taken into consideration. Even whether the administrative division adjustment is belong to the case of actionable, relevant administrative law experts debated (Xiao, 2005) and there is no consensus.

4. THE SUGGESTION OF PERFECTING THE PROCEDURE RULES OF THE ADMINISTRATIVE DIVISION ADJUSTMENT

Improving the decision-making mechanism in accordance with the law and determining the major administrative

¹² See Provisions of the State Council on the Administration of Administrative Division (the State Council released [1985] No. 8).

¹³ Ibid.

¹⁴ See the Notice of Civil Affairs Department of Henan Province on Further Strengthening the Administration Administrative Division. (2009).

decision-making legal procedures, was put forward in the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China. The administrative division adjustment is a major government decision and has its own practices and procedures in the long-term practice. Hence, it is important significance to strengthen the research of the decision-making procedure of administrative division adjustment, and therefore to promote the government decision-making research.

4.1 Enhancing Legislation Status

According to the requirement of advancing the law-based governance of China comprehensively, we must perfecting the procedures of the administrative division adjustment, and our country should form a low-to-high, comprehensive and standardized system of laws and regulations both in the central and local governments through legislation. At the same time, under the current conditions which is not yet mature, we must improve the legal status and formulate the Regulation of Administrative Division or other administrative regulations and local laws and regulations. When conditions are ripe, we should timely submit to the National People's Congress to enact the Law of Administrative division, and therefore to normalize the process of the national administrative division adjustment.

4.2 Perfect the Content of Regulations

We should comprehensively comb the various types of administrative division adjustment and clear the power of examination and approval of each type of adjustment. Meanwhile, we should specify the authority of putting forward the administrative division adjustment by local governments at all levels and require application within the scope of its authority. If the government itself does not apply actively, governments at higher levels shall not carry out related work forcibly.

4.3 Standardize the Decision-Making Mechanism

In the process of administrative division adjustment, it is necessary to set up relevant procedures reasonably and to make decisions democratically and scientifically. Firstly, establishing a reasonable consultation mechanism to ensure that the administrative division adjustment reflects the local people's true willingness. Secondly, building a collective decision-making system. Only after the local people's government executive meeting or plenary meeting, can these decisions and discussions be reported. Thirdly, establishing a long-term expert consulting system to ensure the scientific rationality of administrative division adjustment scheme. Fourthly, establishing a risk assessment mechanism of administrative division adjustment, so as to standardize the evaluation subject, the evaluation content, the evaluation process, the use of evaluation results and the subject of evaluation responsibility and so on.

4.4 Clear Responsibility Mechanism of Administrative Division Adjustment

Administrative division is related to the central government, local government and citizens. It is noteworthy that the local

government's chief executive plays an important role in the process of administrative division adjustment. It is the basis of ensuring the reasonable operation of administrative division adjustment that we set up the mechanism of responsibility. First, specifying the subject of responsibility. In the process of administrative division adjustment, a lot of responsibility subjects are involved. These subjects include the subject of administrative division of decision-making, the unit of undertaking the decision-making, the administrative division adjustment actuators, the professional experts and the entrusted organization and so on. We ought to make clear the responsibility of each subject. Second, specifying the conditions of accountability. We put some issues listed in the file, such as fraud, negligence or don't work in according with the relevant procedures and so on. Finally, specifying the way of accountability. In addition to perfect internal accountability, it is necessary that administrative division adjustment should be brought into the National People's Congress supervision and judicial supervision. If the subject violates some relevant provisions and causes serious results, we will recall the responsibility through the Nation People's Congress and shall investigate for legal responsibility.

4.5 Establish a Dispute Settlement Mechanism

On the one hand, we should establish internal coordination mechanism to solve conflicts between the governments through the government's internal pickets and coordination mechanism. On the other hand, we also should perfect the administrative litigation and bring the administrative division adjustment into the scope of administrative litigation to guarantee citizen's right to get judicial protection.

CONCLUSION

Administrative division is the foundation of the local regime construction with the nature of integrity and fundamentality. Administrative division adjustment, as the major administrative decisions of governments at all levels, it is important to follow scientific and reasonable legal procedures during. The problem of the imperfection in the legal system of administrative division administration is seriously noticeable. So, it is required to improve the procedures of administrative division adjustment and to determine the hard rules, which is the inevitable demand for advancing the law-based governance of China comprehensively and building a rule of law government.

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