

Study on the System of Heads of Administrative Organs Responding to Lawsuits based on China's Reality

-- An Analytical Study based on the Supreme Law Guidance Cases

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Abstract. The system of heads of administrative organs responding to lawsuits in courts has been a legal provision since the enactment of the Administrative Procedure Law of the People's Republic of China in 2015. The system has been witnessed to facilitate the review of administrative procedure cases, being conducive to source management and social stability. However, the common phenomenon of "appearance but silence" and the disparities in implementation by local governments run contrary to the original intention of the system. This paper conducts a case study based on the official guidance cases, dedicated to realizing the perfection of the system.

Keywords: Administrative Procedure Law of the People's Republic of China; The Supreme Law Guidance Cases; The System of Heads of Administrative Organs Responding to Lawsuits in Courts.

1. Legalization of the System of Heads of Administrative Organs Responding to Lawsuits

1.1. Legislative Stipulation and Overview

The system of heads of administrative organs responding to lawsuits is also known as the system of court appearances for chief executives. Before the enactment of the *Administrative Procedure Law* in 2015, the Chinese State Council issued the *Outline for Comprehensively Promoting the Implementation of Administration by Law*, for the first time putting forward the explicit requirement that the chief executives should respond to lawsuits. After the amendment of the new law, it was stipulated in the *Administrative Procedure Law* as a basic principle of administrative procedure that the heads of the administrative organ being sued shall appear in court to respond to the lawsuit. Heads who cannot appear in courts shall entrust the corresponding staff of the administrative organ to delegate. To date, governments at all levels have also introduced relevant policies and regulations for the system.

The Supreme People's Court has issued a judicial interpretation to further refine and enhance the operability of this system. This involves the clarification of the scope of the heads of administrative organs responding to lawsuits in courts, the institutionalized balance between economizing on administrative resources and perfecting the system, the elucidation of the procedures and safeguards for responding to lawsuits in courts, and the stipulation of the corresponding responsibilities.

1.2. Enactment of the System

In the case of Bao Zhengzhao suing Cangnan County Government in 1988, the county governor on behalf of the government appeared in court to respond to the lawsuit, becoming the first case that "heads of administrative organs respond to the lawsuit in courts" in China. This also marked the beginning of the legalization of the system. *Opinions On the implementation of the System of Heads of Administrative Organs Responding to Lawsuits* issued by Heyang County, Shaanxi Province in 1998 stipulates that, once an organ department becomes a defendant, the administrative head must appear in court to respond [1]. After 2004, the local practice of the system was successively promoted throughout the country, with administrative organs actively fulfilling the requirements for responding to lawsuits. The implementation situation was particularly prominent in Haian County, Jiangsu

Province. In *the Outline for the Legal Construction in Haian*, heads of administrative organs responding to lawsuits in courts was set as an important element of performance evaluation. As of 2012, the rate of responding to lawsuits in the county had remained at 100 percent for the past seven years [2]. On November 1, 2014, the amended *Administrative Procedure Law* adopted at the 11th session of the 12th Standing Committee of the National People's Congress indicated that the system has been formally recognized by national law. In February 2018, *the Interpretation of the Administrative Procedure Law of the People's Republic of China* was issued and the system was specifically detailed.

1.3. Theoretical Disagreements

As a practical exploration with Chinese characteristics, the system of heads of administrative organs responding to lawsuits in courts has been developed and improved in the theoretical discussions in academic and practical circles. Supporters advocate it for its significance in promoting the spirit of socialist rule of law. They believe that the system makes for governance for the people, building a law-based government, resolving social contradictions, and innovating social management. In addition, it improves the quality of law enforcement personnel, relevant systems, and the Government's self-construction to a certain extent [3]. Opponents consider it contrary to the original intentions of the *Administrative Procedure Law* because of excessive attention to chief executives. A situation that the chief executive is not clear about specific administrative actions exists. Furthermore, selecting the delegate for courts belongs to an internal activity of administrative organs, being a makeshift instead of promoting justice.

From the author's perspective, the study of the legislation of local systems cannot be separated from China's reality. It is practical experiences that help continuously improve the system of administrative procedures. The system of heads of administrative organs responding to lawsuits in courts keeps being improved based on the practical experiences of local government at all levels, accounting for a larger proportion of administrative judicial practice.

2. Significance in the System of Heads of Administrative Organs Responding to Lawsuits

2.1. Appearance in Court is a Prerequisite for Defending and Facilitates the Review of Cases

Provisions of the Supreme People's Court on Several Issues Concerning the Heads of Administrative Organs Responding to Lawsuits in Courts stipulates that heads of administrative organs or the corresponding staff member entrusted have the obligation to make a statement, reply, debate, final statement, and submit evidence on the case. Explanation of the normative documents on which the case is based should be conducted to ensure "appearance and utterance".

The legality of a specific administrative act is the main object of examination for the exercise of trial power in the administrative procedure by the court. Except for administrative counterparts and stakeholders as plaintiffs, administrative organs which conduct the administrative act are most familiar with the particular case. It is the function of courts to settle disputes. The proof of the evidence is the premise for resolutions, as well as a clear sequence of cases, a solid foundation of fact, and just judgment of courts. Proofs claimed by both parties help better sort out the facts of the case. Furthermore, administrative acts basically have relevant evidence or materials supporting the decisions. Therefore, the participation of administrative organs in lawsuits to prove the basis of the acts made by the organs is an obligation of administrative organs, making for the examination of the case.

Among typical cases issued by Supreme People's Court [4], Jiangsu Zhongxia Group Co. Ltd. sued the Housing and Urban-Rural Development Bureau of the People's Government of Ranghulu District, Daqing City, Heilongjiang Province. Considering the case involves people's lives and property safety, the presiding judge requested the director and deputy director of Hulu District Housing Construction Bureau to take an in-depth understanding of the case and fully prepare for the lawsuit. The two

directors actively participated in the trial and seriously listened to the views expressed based on the full preparation. Therefore, facts were clearer along with the process, in favor of a better resolution.

2.2. Contributing to Source Management and Diversified Dispute Resolutions

Fengqiao experience has always been an important exploration of promoting the modernization of grassroots governance in China [5]. *Outline for the Implementation of the Law-based Government (2021-2025)* proposes the perfection of substantive resolution mechanism of administrative disputes and source management. Diversified dispute resolution is a way advocated based on law-based governance on all fronts in China. The system of heads of administrative organs responding to lawsuits facilitates diversified dispute resolutions to a certain degree. When the heads appear in courts for lawsuits, disputes can be stated and debated to make relevant facts of cases clearer, making it possible to reach an accommodation or administrative organs revoking or altering original acts.

In the administrative review case of Ningxia Specialty Chain Supermarket of Beijing Funing Economic and Trade Co. Ltd. Suing Beijing Dongcheng District Market Supervision Bureau for an administrative penalty and Dongcheng District People's Government [6], the relevant head appeared in court as a defendant. During the process, both parties fully expressed views and reached a consensus on the resolution of the disputed issue. Finally, the plaintiff filed a motion to dismiss the case. Therefore, the appearance of heads in court creates a communication opportunity, being conducive to finding a resolution during the proceedings or even before the trial and reducing judicial pressure.

2.3. Strengthening the Trust of Administrative Counterparts and Stakeholders in Law Enforcement and Justice

The natures of courts and administrative organs tend to render the public think that staffs all belong to officers. The absence in courts of heads of administrative organs as defendants can make plaintiffs think that bureaucrats shield one another. This harms public trust in administrative and judicial organs, destroying the relations between organs and people. Therefore, the appearance of heads in courts builds a platform for both sides to negotiate, during which people feel valued and gained resolution, strengthening the trust in organs.

2.4. Avoiding the Recurrence of Similar Disputes for Social Stability

In group cases, the problems that the parties concerned request to be resolved are largely similar. The resolution of one case can help administrative organs to learn from the experience, recognize the deficiencies in law enforcement, and make better improvements. This makes for perfecting law enforcement and safeguarding the legitimate rights and interests of the people.

For the forced demolition case of Peng and 40 others suing People's Government of Fuan City, Fujian Province and other four organs [7], Ningde Intermediate People's Court took the initiative to hold symposia and conduct one-to-one negotiations after the trial. When the progress in coordination is genuinely difficult, judgment was made promptly and by the law. The chief executive of the People's Government of Fuan City, Fujian Province appeared in court as the defendant and promised to coordinate with the relevant land expropriation department to improve the expropriation proceedings, solving problems by means of rent subsidy. In administrative cases involving land expropriation, practical solutions are proposed to not only resolve disputes but also carry out systematic rectification for socialized problems. This serves as a reference for other possible problems, helping to avoid the recurrence of similar cases and protecting the legitimate rights and interests of both the counterparts and the potentially disputing party.

3. Current Judicial Practice

3.1. Large Disparities in Implementation Across Regions

Since the system of heads of administrative organs responding to lawsuits in courts was set as the basic principle of administrative procedures, local concrete implementation measures and practices have proved the strength of the system. However, the proportion of the chief executive being present in judicial practice is relatively low, and the corresponding requirements also vary across regions.

In terms of the proportion of court appearances, Hebei Province's 2020 annual report on the construction of law-based government demonstrates that the proportion in Shijiazhuang, Chengde, Tangshan, Baoding, Xingtai, and Dingzhou cities exceeds 70%. The proportion then saw an increase in 2021 but not all regions reached 100%. Jiangmen City, Guangdong Province, respectively had a proportion of 64.31%, 81.53%, and 98.22% in 2019, 2020, and 2021. Anhui Province has introduced relevant regulations aiming to achieve a 100% proportion and reached the goal in June 2021.

Relevant data released by local governments expounds that only Anhui Province clearly stipulated the target for the proportion of court appearances for heads and reached 100%. The proportion of other provinces had a rise and most of the provinces reached 95% to 98.5% in 2021 but not 100%. Considering the situation, the reasons are as followed. Firstly, there is no explicit stipulation for mandatory appearance, which causes many chief executives to only arrange staff to delegate. Secondly, the rigid official rank standard makes chief executives unwilling to appear in courts to respond to lawsuits.

3.2. “Appearance but Silence” Rigidifies the System

Despite court appearances, “appearance but silence” exists in judicial practice. That is to say, there is part of chief executives appearing in courts just to “show up” instead of making a statement of relevant facts or expressing their opinions. From the reports on the proportion of court appearances in various places, the one-sided pursuit of figures can be found while the practical effect of the court appearances is vague.

3.3. Increased Work Pressure for Heads

In addition, increasing cases of administrative procedures also bring pressure on heads of administrative organs. Except for work in administrative bodies, chief executives are fully occupied by a large number of cases so it is unrealistic for them to tackle each case with chariness and responsibility. If the situation is not relieved, people's confidence in the system can be maimed.

4. Development Prospects

4.1. Improving the Evaluation Mechanism and Ability to Respond to Lawsuits

The system of heads of administrative organs responding to lawsuits is undoubtedly the development tendency of current and future legal construction. However, it is set out in legal documents only as a basic principle of the *Administrative Procedure Law*. The introduction of corresponding specific implementation measures also proves the development trend of this system. In order to ensure that the administrative organs make every administrative act responsible for their own and for the people, improving the evaluation mechanism must be the way to increase the proportion of appearance in courts to respond to lawsuits and abandon the rigid official rank standard. The evaluation mechanism is also conducive to encouraging administrative organs to carefully study case materials and organize facts, evidence, and basis of cases for more effective resolutions. In addition, it is indispensable to involve reformation in the evaluation mechanism. The system of heads of administrative organs responding to lawsuits needs to be set as an important job duty and involved in reports on the government work in the Two Sessions and the annual evaluation of governments and law enforcement quality, marking as an important indicator for evaluating law-based government administration. Legal

responsibilities and safeguards are also necessary in order to strike a balance between incentives and penalties [8].

4.2. Establishing Monitoring and Disciplinary Mechanisms

Annual reports of the State Council and governments of provinces usually release relevant information about heads of administrative organs responding to lawsuits in courts. Making government affairs open is conducive to the understanding of society and citizens of the relevant situation and better supervision of government work. In addition to governments, other administrative organs and authorized organizations can also adopt this approach to make relevant information public in a timely manner, so as to allow the society to monitor and, in turn, strengthen the relevant work of the system.

The public's understanding of laws and regulations is also an important part of the rule of law. If the administrative counterparts and stakeholders are not familiar with the system of heads of administrative organs responding to lawsuits, it is unrealistic for them to exercise their right to request the appearance of the person in charge, resulting in a low-quality job of supervision. Generally speaking, the court clarifies plaintiffs' rights in the procedure and the corresponding obligations when sending a notification of filing a case. During the process of revising files, the system of heads of administrative organs responding to lawsuits can be added to safeguard administrative counterparts and stakeholders' rights to be informed and litigation rights.

4.3. Leveraging Technology

The development of the Internet has realized the involvement of technologies in legislation, law enforcement, justice, and legal supervision. New forms of action, such as Internet courts and online trials have provided convenience for courts and litigant participants. Therefore, chief executives who cannot be present are able to participate in the way of online courts, leveraging means such as video calls to state, debate, and solve disputes. Along with the progress of technology, more diversified methods for dispute resolution will be applied to perfect the system of heads of administrative organs responding to lawsuits.

5. Conclusion

Administrative action is one of the most common phenomena in China's legal process, while its corresponding study of the Administrative Procedure Law has slightly fallen behind compared with other parts of the law. During the decades when China's administrative procedure law has developed rapidly, the system of heads of administrative organs responding to lawsuits in courts has evolved from case trials to a legal provision with judicial interpretation and guidance cases for academic research. Examining local practices, problems indeed exist in the operation and implementation of the system. Therefore, transforming the system from "with Chinese characteristics" to "of Chinese experiences" is the basic direction we should strive for.

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