

# *Research on the criteria for judging administrative agreements*

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**Abstract:** At this stage, with the continuous deepening of the comprehensive rule of law and the guidance of DC Thought on the Rule of Law on Socialism with Chinese Characteristics for a New Era, China has initially established a relatively mature administrative legal system. As a new way of national administration, administrative agreements are of great practical significance for the establishment of service-oriented government and the modernization of national governance system and governance capacity. At the same time, administrative agreements, as a relatively new and important administrative means of modern administrative law, can promote the implementation of administration by relevant administrative organs. The state achieve administrative objectives. Due to the way of the conclusion of the administrative agreement and the difference between the subject of the conclusion, the administrative agreement has dual attributes, that is, administrative and contractual. Especially when the administrative agreement is included in the scope of administrative litigation, it officially indicates the difference between the administrative agreement and the civil contract in the legal system, which also leads to the lack of administrative agreement in China. There is a lack of uniform criteria for judging whether it is an administrative agreement. Therefore, it is necessary to make accurate and effective judgments based on the main body, purpose and content of the administrative agreement and pay close attention to the core characteristics of the administrative agreement to ensure the stable play of the role of the administrative agreement.

## **1. Introduction**

Because with the continuous development of China's economy and society and the gradual deepening of the rule of law, there have been many conflicts between public and private powers in the field of administrative law. Administrative agreements, as the main way for administrative subjects to realize the performance of administrative responsibilities, are widely used in practice, but the limitations of administrative agreements under their legal norms are also obvious.

## **2. Formulation of the problem**

With the revision of the Administrative Procedure Law and the recognition of administrative

agreements at the national legislative level, on this basis, the Supreme People's Court promulgated the "Regulations of the Supreme People's Court on Several Issues Concerning the Trial of Administrative Agreement Cases" (referred to as the "Provisions of the Administrative Agreement") for judicial review of administrative agreement cases in December 2019. Special provisions have been made to make the definition of administrative agreements clearer at the level of judicial practice. Although after clarifying the concept and definition of administrative agreements, there are still a large number of unnamed administrative agreements in practice. Because the subject of the administrative agreement, the conditions and circumstances are different, they are involved and The legal problems of radiation are extremely extensive and extremely complex, which often lead to the lack of de facto administrative agreements, so that the lack of relevant administrative agreements is not guaranteed, resulting in the confusion between administrative agreements and civil contracts, which forms a cognitive dilemma of administrative agreements. In addition, China lacks a unified administrative procedure law to regulate administrative agreements as a whole. At the same time, the academic aspects have not reached a consensus on the classification of administrative agreements, the setting of legal requirements, the clarification of illegal effects, the progress of agreement relations, the implementation of the right of public law claims, and the quasi-use of private law norms, which has led to administrative. The protocol identification standard is not clear. After clarifying the relevant definitions of administrative agreements and related problems, we start from the standards of the recognition of administrative agreements in the judicial practice of the courts of the Supreme People's Court, combined with the core identification standards of administrative agreements between different theories, and find the dilemmas in the judgment standards of administrative agreements at this stage, so as to explore the administrative agreement. In this way, the core judgment criteria are established.

### **3. Disputes over the criteria for judging China's current administrative agreements**

#### **3.1. Judicial practice in adjudication of administrative agreements**

##### **3.1.1. Basic case**

On May 18, 2012, the Anji County Party Committee Office of the Communist Party of China and the Anji County People's Government Office issued the Security Committee Office [2012] No. 61 to establish the Anji Lingang Economic Zone Management Committee (hereinafter referred to as the Lingang Management Committee). On December 30, 2013, the Anji County Establishment Committee issued a document to abolish the Lingang Management Committee. On November 18, 2015, Huzhou Zhenxin Asset Evaluation Co., Ltd. was entrusted by the Anji Lingang Economic Zone Management Committee (hereinafter referred to as the Lingang Management Committee) to evaluate the assets of Anji Zhanpeng Metal Precision Foundry (hereinafter referred to as Zhanpeng Foundry) and issued the Asset Evaluation Report, which was aimed at demolition. The above report is for the fence to obtain compensation for demolition. On January 22, 2016, the Lingang Management Committee and Zhanpeng Foundry reached the Enterprise Relocation Compensation Agreement on the relocation of enterprises, which agreed that the Lingang Management Committee would resettle in the form of money, with a total amount of 1131,650 yuan for relocation compensation. After the signing of the agreement, both parties to the contract performed their respective obligations in accordance with the contract. On July 12, 2017, Zhanpeng Foundry filed a lawsuit with the Anji County People's Government as the defendant, requesting that the specific administrative act of the Enterprise Relocation Compensation Agreement made by the defendant to be revoked, and ordered to re-sign the demolition with the defendant in accordance with the law.

### 3.1.2. The judgment criteria cited in the reference case

First, When judging the nature of the Enterprise Relocation Compensation Agreement in this case, the Huzhou Intermediate People's Court and the Zhejiang Provincial High People's Court define the agreement involved in the case by quoting the four elements defined in the administrative agreement.<sup>[1]</sup>Main elements. According to Article 11 of the Interpretation of the Applicable Administrative Procedure Law: "In order to achieve public interests or administrative objectives, an administrative organ, within the scope of its statutory responsibilities, concludes an agreement with a citizen, legal person or other organization with the content of rights and obligations in the administrative law. The subject of the signing of the administrative agreement must be an administrative organ."<sup>[2]</sup>Elements of purpose contained in the administrative agreement. The purpose of the administrative agreement is to realize the public interest, the administrative agreement is the means for the administrative organ to realize its management functions, and the administrative organ enjoys unilateral mandatory administrative benefits and other factors. This "terminological" method is effective in interpreting and determining the nature of the agreement, and is also recognized in judicial practice.<sup>[1]</sup>Elements of the content contained in the administrative agreement. That is, the difference from civil contracts lies in the difference in the pursuit of interests, different public and private rights and interests, and the content of the representative administrative agreement is more reflected in the relationship of rights and obligations in administrative law.<sup>[3]</sup>*Elements of intent contained in an administrative agreement.*Since the Administrative Procedure Law separated the administrative agreement from the civil law, although the administrative agreement has its particularity as an administrative act, the administrative agreement is contractual and emphasizes the expression of meaning between the administrative organ and the relative. In summary, the Huzhou Intermediate People's Court and the Zhejiang Provincial Higher People's Court held that the signing of the Enterprise Relocation Compensation Agreement did not conform to the main elements. In this case, the Lingang Management Committee is an organization established by the Anji County People's Government and other institutions with normative documents, but it does not have the ability to bear legal responsibilities independently, nor does it have the right to carry out administrative acts in its own name. After the revocation of the management committee, the management committee has no right to sign the contract. Although the Anji County People's Government recognizes the validity of the agreement, it cannot change the fact that the subject was disqualified at the time of signing the agreement. Therefore, this agreement is illegal as an administrative agreement.

Second, Through the standard judgment of the administrative agreement, according to the form of the standard administrative agreement.<sup>[1]</sup>, whether there is consensus between the performing administrative organs and the administrative counterparts. Consensus is the only thing that has the same with civil contracts, which promotes the administrative agreement to be included in the civil dispute resolution track in the early stage of development. Due to the objective situation of the development of the administrative legal system, the legal system itself has excessively introduced the relevant rules of civil contracts. It lacks a set of legal system that conforms to the regulation of the administrative agreement itself. It prefers the civil process as the dispute resolution method, which brings more uncertainties to the judgment of the administrative agreement. Therefore, the formal standard is more Emphasize the nature of the subject.<sup>[2]</sup> The substantive standard, that is, the subject matter and content of the administrative agreement, have relevant rights and obligations in the administrative law, which depends on whether to exercise administrative functions and powers and perform administrative duties; whether it is to achieve administrative objectives and public services; whether the administrative organ has beneficial rights. The difference between administrative agreements and civil contracts is emphasized through the characterization of rights

and obligations. To sum up, the Huzhou Intermediate People's Court and the Zhejiang Higher People's Court believe that the Enterprise Relocation Compensation Agreement involved in this case was signed by the Lingang Management Committee and did not meet the relevant main elements of the administrative agreement. Although the Anji County People's Government recognizes the validity of the agreement, it cannot change the illegal fact that the Lingang Management Committee signed a compensation agreement. It is judged that the act of the involved agreement signed in this case is illegal, but according to other judgment criteria of the administrative agreement, the compensation agreement involved is voluntarily reached by the two parties involved on the true intention, and the actual performance has not damaged the actual legitimate rights and interests of the parties to meet the principle of the validity of the administrative agreement contract. At the same time, when signing the agreement involved in the case, it is to build a Lingang Economic Zone to promote the socio-economic development and meet the public interest needs stipulated in laws, regulations, rules and normative documents, but also reflects the purpose of the administrative agreement. Finally, if the Anji County People's Government recognizes the compensation agreement involved in the case, the validity of the agreement shall be retained. Therefore, although the relevant administrative acts involved in the case are illegal, the validity of the agreement is still reflected in the administrative agreement. The Supreme People's Court rejected the claim of Anji Zhanpeng Metal Foundry's request to revoke the relevant agreement and re-sign the demolition compensation agreement with it in accordance with the law. To a certain extent, it is determined that the "Enterprise Relocation Compensation Agreement" in this case is equivalent.

### **3.1.3. Repetition and divergence of judgment criteria**

First, the relationship between the judgment of administrative agreements and the determination of administrative agreements is chaotic. Judging from the judgment results of the Supreme Court of the above cases in the article, the judgment of the administrative agreement should be carried out from multiple angles and multiple dimensions. It is necessary to take into account the dual characteristics of the administrative agreement, pay attention to the procedural legal issues related to the act of the administrative agreement, and also examine the validity of the administrative agreement in the contract. First, judge whether the administrative agreement conforms to the subject, purpose, content and meaning, and then use the two judgment criteria, form and substance of the administrative agreement. China does not have a qualitative judgment and analysis path in the judgment of the administrative agreement, but simply believes that it can be recognized as an administrative agreement if it meets the four elements, but there is no clear provision for the above-mentioned methods, which is easy to cause the wrong judgment of the administrative agreement. It also shows the differences between the contractual nature and the four elements in the judgment of the administrative agreement to a certain extent. However, through the jurisprudence analysis of the Supreme Court, this duplication and disagreement not only stipulates the identification standard of the administrative agreement to a certain extent, but also expands the scope of the invisible identification of the administrative agreement on the other level.

Second, there are different differences between the judgment criteria of the administrative agreement and the legal attributes of the administrative agreement, which increases the difficulty of determining the administrative agreement. As a kind of administrative act, the administrative agreement, due to the differences in subjects and the imperfection of existing laws and regulations does not well explain whether the administrative agreement involved in the above-mentioned cases belongs to the nature of public law or private law. In judicial practice, for a large number of contracts that have appeared in judicial practice, such as government procurement contracts, state-owned land use right assignment contracts, entrusted training contracts, prospecting rights

transfer contracts, public security punishment guarantee agreements, administrative enforcement agreements, urban sewage and drainage franchise contracts, the nature of which are not strict. Definition, although the three elements reflected in the definition of the administrative agreement at this stage add judgment conditions, objectively, the interpretation of the connotation and extension of the three constituent elements will lead to the uncertainty of the characterization of the administrative agreement. Does the administrative agreement need to determine whether to determine the agreement according to the principle of proportionality? Legal attributes, which can easily lead to the "privateization of public law" make the judgment standard of administrative agreements low in judicial practice. On the other hand, in judicial practice, due to the duality of administrative agreements (administrative and contractual), the administrative act of administrative agreements is often disassembled into two different parts for screening and judgment. These two parts reflect two different legal attributes, that is, if the administrative act made in the first stage after the conclusion of the agreement is declared. If it is invalid or revoked, will the agreement in the second phase be affected by the defects in the administrative sanctions at the contracting stage of the agreement? Similarly, if the second-phase contract is declared invalid or revoked, what will be the effect of the administrative sanctions made in the first phase? It can be seen that although the elements are to standardize the judgment standards of administrative agreements to prevent the state from escaping from the constraints of public law by using private law, the confusion of legal attributes behind this may cause confusion in the internal logic of the legal system, thus causing problems to the judgment standards of administrative agreements.[4]

### 3.2. Collation of the criteria for judging current administrative agreements

At this stage, there are two sources of judgment criteria for administrative agreements. First, you can know the judgment criteria of the administrative agreement through the definition of the administrative agreement and the interpretation of the relevant provisions of the Administrative Procedure Law. Second, through judicial practice, the analysis of the judgment documents made by the Supreme People's Court can be summarized as follows: 1. If the parties involved have no dispute over the attributes of the agreement, then the Administrative Division of the Supreme People's Court will not elaborate on the attributes of the agreement involved in the case, but directly hear the dispute of the case; 2. If the parties involved dispute the attributes of the agreement, and the agreement is a famous administrative agreement, the Administrative Division of the Supreme People's Court will not make a detailed statement, but acquiesitly presume that it belongs to an administrative agreement; [5]3. Only when the parties have a dispute over the nature of the agreement, and the agreement is an unnamed administrative agreement, will the Administrative Division of the Supreme People's Court conduct a special analysis of the nature of the agreement. Among them, the judgment standard embodied in judicial practice is more that the judges of the Administrative Division of the Supreme People's Court use the 2015 Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Administrative Litigation Law of the People's Republic of China (hereinafter referred to as the "Interpretation"), which includes the five-factor principle. At the same time, the interpretation is formed through comprehensive consideration of factors such as the conclusion, implementation, and effectiveness of the agreement.[6]

First of all, it is feasible to apply the standard to the administrative agreement. Due to its particularity, the current legal norms do not fully characterize the administrative agreement, which means that the applicable standards for judging the relevant agreement are flexible. On the one hand, the administrative agreement standard is unclear about the boundary between public and private laws. Due to the limitation of the legal system, China's judgment standard of administrative

agreements is based on the difference between public and private law. However, in fact, administrative agreements integrate administrative nature and contractual nature. In real judicial practice, the administrative agreement that causes disputes is the administrative organ. In this kind of agreement concluded with the other party, the duality of the administrative agreement is clearly reflected. The content of the agreement involves public and private law, and the legal relationship is mixed with each other. It is difficult to characterize a certain legal attribute alone. In this case, the judgment of the administrative agreement with the attribute of public and private law is no longer applicable, because under certain circumstances, there is no need to pay too much attention to the difference between public and private laws, because the corresponding judgment standards are flexibly applied. On the other hand, the administrative agreement, as a kind of administrative act, theoretically, should follow the principle of full-process supervision, double review and double judgment when judging the administrative agreement, and review the legality of the relevant act. Most of the administrative agreements generated in practice go beyond these norms, making the relative administrative agreements a nameless administrative agreement. A large number of unknown administrative agreements are adjusted according to the actual situation, and the lag of legislation is destined to be unable to keep up with the pace of law enforcement. Therefore, it is flexibly applied to the judgment standard of administrative agreements. It becomes more possible. When conducting the legal review of administrative acts, we should pay more attention to the background of conclusion, performance, form changes, etc. involved in the administrative agreement acts to make a reasonable review of the administrative agreement, not just judge by clear judgment criteria, if it is a part of the nameless administrative agreement. Administrative acts are not compliant, but according to other conditions and the flexible application of judgment standards, it can be recognized that the corresponding unnamed administrative acts only need to re-formulate the relevant administrative agreements. Finally, the incomplete definition of the administrative agreement leaves convenience for the judgment standard of the administrative agreement, and the case judgment of the Supreme Court in judicial practice reflects the recognition that the judgment standard of the administrative agreement can be applied flexibly to a certain extent.

#### 4. Conclusion

There has always been no unified standard for the judgment of administrative agreements, and legislators are not omnipotent. They can't legislate everything. The existing problems can only be solved step by step. Through the judgment analysis of the Supreme People's Court on administrative agreement cases and the understanding of the definition of administrative agreements and the current judgment standards of administrative agreements, in the face of the judgment of administrative agreements, we should not simply copy the relevant judgment standards, but should skillfully understand the scope of use of these standards. Therefore, we should flexibly apply the principle of proportionality to the relevant judgment criteria through the multi-factor consideration of the agreement. Only in this way can there be an accurate judgment on the judgment of the administrative agreement, so as to promote the administrative agreement to better serve the society, give full play to the open, fair and fair competition of the factors of production, and promote the full release of the potential of social capital., and promote the objectives of administration and public services.

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