

Several legal issues related to administrative restrictions

--Take the "Tail Restriction" in Some Cities in China for Example

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Abstract: Administrative restrictions refer to administrative acts that administrative agencies restrict citizens' property rights through administrative coercion. Administrative restrictions are the necessary means for government departments to govern the country and maintain social order and stability. However, due to the lack of existing laws and regulations, some local governments use power in a disorderly way and abuse them seriously. In this paper, the vehicle "tail limit line" as an example, the administrative restrictions on the basis of implementation and compensation and other legal issues are described.

1. The question is raised

At present, reducing urban congestion, improving atmospheric environment and energy conservation and emission reduction are the top priorities for the government to focus on the people's livelihood. In Beijing, for example, to alleviate the increasingly serious traffic congestion, has introduced a number of measures in recent years, there are two of the most representative: one is the vehicle line "tail" measures; Second, the small passenger car deck lottery measures. At that time, all over the country to follow suit, for example: on November 4, 2017 in tianjin for midsize cars and heavy vehicles. The limit line, Shanghai, hangzhou, chengdu, tangshan also successively into this category. Although the specific implementation content regulation is different, but essentially is the administrative limit to the citizen property right. Administrative restriction means the limitation of property rights and even infringement. The so-called property right refers to the right to direct control, to enjoy its interests and to exclude others from domination or interference. Citizens should have the right to control their vehicles, and to be free from the restrictions of others, including government agencies. In essence, the restriction of "vehicle tail" is the constraint to the owner's right to use, which directly influences the realization of the value and efficiency of ownership. Ownership is not here is not restricted by any power in the right, under the influence of the public interest theory, the administrative organs of civil property rights can be properly intervene, but there is a limit, intervention should be set for the necessary legal boundaries.

2. The type of administrative restrictions

Administrative restrictions are the restrictions imposed by administrative organs on property rights according to law. They belong to the category of public law restrictions on property rights and are intended to safeguard and promote public welfare. Has the following types: First, the emergency and normal restrictions. Emergency restrictions are primarily for emergencies and are an impending limitation. For example, outbreak of SARS. Normal restriction is a habitual state of work, will not be easily changed once taken. Second, temporary restrictions and long-term restrictions. Temporary restrictions refer to short-term restrictions; long-term restrictions refer to long-term restrictions or indefinite restrictions. Under emergency, temporary restriction is usually adopted, and long-term restriction is often taken under normal conditions. Third, the restrictions on the basic living conditions of citizens and the restrictions that affect the living and production facilities of citizens. The "restrictions" in the former directly affect citizens' sources of living and job opportunities. The

"restrictions" in the latter are directly related to the daily convenience of citizens. For example, restricting the taxi driver to a limit can affect the source of his life. Limiting the number of private car owners can only affect his life and his travel convenience.

3. The basis of administrative restriction: the principle of legal reservation

Administrative restrictions began in public, will finally public, must be bound by law, or breach of privilege but damage to public welfare. In other words, administrative restrictions must be carried out under the law, this is the requirements of administrative law. Administrative restrictions, the key is whether implementation of law reservation, namely administrative restrictions by law should retain its set right, in order to achieve effective control of the administrative legislative power limit. Legal reservation is a product of German administrative law theory, the "invention" at the beginning of the main is to determine whether the legislature is the administrative organ has superiority in a Democratic Congress holding not democratic government, namely "the specific matters absolutely require formal legal provisions" but not all administrative restrictions are required by law to set, only the "important matters" must be set by law. There is no doubt that "relates to the tail number limit line measures To the right of citizens (right), but whether it can be included in the field of "important matters" is the theory and practice of thinking. The author believes that the "important matters" should have the following properties: first, serious interference. Here the "severity" to achieve a certain degree of this "degree" the need for further discussion. For example, the "intervention" is constrained by general exercise of property rights, property rights may also change the content itself, which directly affect the citizens to "the" possession, use, income and disposition. Second, dangerous interference. Administrative restrictions under certain scope and degree, will not cause the public but if questioned, abuse of power to intervene, there may be restrictions become legitimate for the illegal infringement. Administrative restrictions needed is harmful to the citizens to use, or the public interests in danger of erosion, Otherwise it will constitute abuse. Of course, because of the "public interest" abstract, fuzzy, still need the legislative organs of the "reinforcement", the administrative authorities to take the necessary measures based on the public interest is the basis of legitimacy. Generally speaking, those who have "serious" reality, "limit the risk of behavior" must be carried out by law. The author believes that the "tail number limit line" is the typical behavior of administrative restrictions, or even suspected infringement facts. There are two reasons: first it has the nature of "serious interference". The "tail number limit line" great extent damage to the property and content form, and normal trend. Secondly, the limiting behavior belongs to dangerous interference. Just try to alleviate traffic congestion and improve the atmospheric environment. Traffic congestion is a city, one of the important factors of the car number is only of congestion caused by vehicle exhaust; The emission is only one of the factors of air pollution, whether it is a decisive factor, but also need authoritative scientific proof. In the case of unknown reasons, arbitrary restriction is easy to cause social controversy and query. Therefore, the "tail number limit line" measures must be based on the direct provisions of the law.

4. The implementation limit of administrative restrictions:

4.1 The principle of proportionality

The administrative department has administrative restrictions right has theory and practice in administrative law embodies the consensus, but does not mean that the exercise can be arbitrarily limiting citizens' property rights, the exercise of governmental authority shall abide by the administrative principle of proportion, which should be objective, appropriate and necessary and justified and considering relevant factors, not consider irrelevant factors.

4.2 The content of the principle of proportion.

The principle of proportionality stems from the German administrative law, which hides behind the fact that administrative measures can not conflict with and violate administrative purposes. In

short, it is that administrative actions should not go beyond the necessary limits to achieve the desired result. The principle of proportionality has economic attributes and is the common rule of thumb of mankind that the means and results should be proportional. Such axioms are accepted by the theoretical and practical circles of administrative jurisprudence all over the world and originated in Germany but have been developed and perfected in the practice of governments in various countries. In general, the principle of proportionality includes the following three aspects: First, appropriateness. The so-called appropriateness refers to the administrative means and purpose must have a direct and necessary relationship, rather than subjective assumptions and speculations. If the administrative decision fails to achieve the administrative purpose, it will not produce the best legal result, indicating that the administrative means implemented are not appropriate. Second, the necessity. The core of the principle of proportionality of administration is based on necessity. In other words, the implementation of administrative restrictions has exhausted the methods and options for producing better legal effects. That is, the final administrative decision is the most correct and rational path that can be more effective than the other channels. In other words, administrative restrictions are one way to minimize the harm to relatives, and there are no better alternatives in this way. Third, efficiency. Economic, efficiency is the basic principle of proportionality. In other words, there is a direct link between administrative actions and outcomes. Excuses for good outcomes should never be used without regard to any cost issues. The intangible costs of administrative means have a negative impact on the public welfare of society and even reduce the benefits of social welfare.

4.3 The application of proportion principle in administrative limits.

The principle of administrative proportion has already practiced consensus in the theoretical and physical world, but it is limited to theoretical consensus. In practice, the specific application of the principle of proportionality needs further discussion and research. First, the concretization of appropriateness. The appropriate kernel is "can achieve administrative purpose" and "achieve legal effect". There is no doubt that the implementation of authority by the administrative organs should have the function to achieve the actual effect of some administrative purpose, which is the minimum requirement for appropriateness. Second, the implementation of the administrative action must meet specific quantity demand, which is to produce the effect of "external" and "internal", namely administrative act can effectively achieve the goal of the administrative management. In addition, the comprehensive selection of the types, means, means, scope and degree of administrative behavior should be objective and necessary, which means that the administrative purposes cannot be realized without the means. Second, the quantification of necessity. The kernel of proportionality is necessary, but what is necessary? There may be differences in understanding and understanding of individual value judgment. Therefore, it is necessary to refine the analysis and treatment so as to achieve the consensus in reality. The key to understanding the necessity lies in how to understand "minimized harm" and "irreplaceable". To this, the author thinks that it is necessary for the various issues involved in the investigation, demonstration, and analysis, thus come to the conclusion that scientific, objective, and not rely on theoretical speculation, should pay attention to the empirical. The scientific method proves that the necessity of administrative action is not only the basis of legitimacy, but also the unique value of the empirical evidence. Third, efficiency. Proportionality justifiably has economic attribute, when there is a dispute, can give a full play to the superiority of the proportion principle economic attribute, a simple mathematical calculation method can largely eliminate the dispute to reach a consensus. In other words, when we can't for something whether it fair and right, of the type of the disadvantages of simple conversation mode easier to communicate and exchange, or whether the government restricted the other party for the cost of computation is easy to agree. Only the administrative authorities pay more attention to the balance, while the other people focus on their own interests.

4.4 The application of the principle of proportionality in the tail number limit line.

Specific to the "tail number limit line" phenomenon, using the method mentioned above, do the following analysis: first, must determine how the tail number limit line "administrative purposes. Only clear administrative purposes, to the choice of various administrative means. For example, the

Beijing motor vehicle limit line measures began in 2008 during the Olympic Games" double limit line", shortly after the Olympics began implementing the "tail number limit line", and has repeatedly issued a circular to extend the implementation period of the limit line measures. During the Olympic Games, in order to reduce traffic congestion and improve the atmospheric environment, the Beijing municipal government to do the implementation of administrative restrictions, but the Olympic Games after the end of the tail," the number limit line "has become the norm. There is no doubt that during the Olympic Games take measures to limit the administrative purpose is clear and specific, so get the public to understand and accept, but with the Olympics in the CIS The closing of this measure is quietly preserved, obviously compared with the original administrative order has changed. To alleviate traffic congestion and improve the atmospheric environment is the pursuit of long-term effects, rather than short-term changes, since it is a long-term relief and improve social governance must formulate long-term objectives. The second step appropriate, must prove that the "tail number limit line measures. The implementation of measures to limit the need to help ease traffic congestion and is conducive to the improvement of atmospheric environment, or lack of appropriate administrative measures. There should be at least the objective data not implement the" tail number limit line measures to solve the traffic congestion and air the problem of pollution. The third step, precise analysis of the necessity of the city. Traffic congestion and air pollution problem is the economic and social development to a certain stage, in essence is the human development and social management. The type behind, the contradiction between economic development and environmental governance, it is the comprehensive management of the problem. "The tail number limit line", "single and double limit line and limit line measures just in a comprehensive management measures, but is not the only choice. Effective means of administrative organs of the same or similar is there. Obviously, management of city traffic congestion from strengthen traffic management, improve the transportation infrastructure, the development of public transport, improve citizen awareness of traffic safety, promoting" green travel "and other aspects, any of these measures are beneficial to alleviate the traffic pressure. The administrative organ in the limit should be weighed and compared before measures the introduction, limit line measures is undoubtedly a great harm to citizens right, first of all should be excluded. Therefore, the government to" block "is a long-term, continuous work, temporary measures to limit not to Enough to solve, need the joint efforts of the whole society.

5. The result of administrative restrictions: the issue of administrative compensation

Administrative restrictions are based on the needs of the public interest, with the basis of legitimacy, but also to a certain extent derogatory property rights of the restricted people. For the public interest and contribute to personal interests, it is necessary to compensate the restricted people. In reality, the compensation can be judged by the following three aspects: First, the administrative restrictions that cause the total loss of citizen's property should be compensated; Second, the administrative restrictions on the possession of restricted objects to be compensated; Third, the administrative restrictions As a result, the source of life of the restricted person is directly affected and needs to be compensated. Take the "tail number limit" measure as an example. The limit line is only divided into periods and sub-sections. It does not result in complete loss of vehicle ownership and can not be compensated. Second, the act of limitation is not to hold possession of citizens' property, but to restrict access. Therefore, it should not be compensated. In addition, the delineation measures have had an impact on the facilitation of vehicle ownership for private car owners but have not reached the point of affecting the source of their livelihood. They should also not be compensated. Unless a for-profit taxi is restricted, it must be compensated.

6. The conclusion

In real life, there are still many cases in which citizens' property rights are restricted by the executive authorities, which is by no means limited to one case of "tail number limit". No matter what form of administrative restrictions should be consistent with the principles of legal reservation and the principle of proportionality, to act according to law, administration according to law and the

rational choice of the most optimal administrative means. If the administrative restriction is the last resort and causes actual damage to the real right of the restricted person, administrative compensation should be given.

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