

Exploration of the Optimization Path for Administrative Legislation and Administrative Law Enforcement—Taking the Celery Case of Luo in Yulin, Shaanxi Province as a Starting Point

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Abstract: The 2019 case in Yulin, Shaanxi Province, which was fined 66,000 yuan for selling five jin of celery, has drawn great attention and sparked heated discussions after the intervention of The State Council inspection team and the coverage by CCTV. On the one hand, it is the legal legitimacy of administrative decisions and enforcement based on laws and regulations; on the other hand, it is the irritability reflected by the huge disparity between meager profits and high fines. The two are the essence of the public controversy. Such cases of "minor offenses and heavy penalties" not only expose food safety issues, but also highlight problems in administrative legislation and law enforcement, whose root causes mainly lie in two aspects: one is the imperfection of administrative legislation, and the other is the "mechanical administration" phenomenon manifested on the surface of law enforcement and the problems reflected in the ability of administrative personnel. The relevant provisions of the Administrative penalty law should be further refined to enhance the ability of administrative personnel to exercise discretionary power and comprehensively apply administrative legal norms, so as to better balance the rationality and legality of administrative legislation and law enforcement.

Keywords: Administrative Law Enforcement; Administrative Penalties; Proportionality between Offense and Punishment; Reasonable Administration

1. Introduction

Luo, an individual business owner, and his wife He, who run a vegetable and oil store in Yuyang District, Yulin City, Shaanxi Province, took two pounds of celery from Luo's store for testing during a random inspection by the regulatory authorities in October 2021. The test results showed that the sampled celery did not meet the requirements of the National Food Safety Standard - Maximum Residue Limits of Pesticides in Foods. After investigation, it was found that the celery was purchased by Luo and his wife from a farmer in a certain farmers' market. Besides the two jin that were sampled, the remaining five jin had been sold at a price of 4 yuan per jin, earning a total of 20 yuan, with a net profit of less than 10 yuan. About a month after the sale, the couple received feedback from the market supervision department that the celery could not be retrieved at this time, and they were unable to provide the supplier's license certificate and receipts, and could not truthfully explain the source of the purchase. As a result, the regulatory authorities determined that the vegetable and oil store had failed to fulfill its inspection obligations and violated the relevant provisions of the Food Safety Law, and imposed a fine of 66,000 yuan on it.

The Luo couple were dissatisfied with the penalty and filed an administrative lawsuit in February 2022. In June of the same year, the people's court made a first-instance judgment, holding that there was no violation in the subject and procedure of the penalty in this case and that the application of the law was correct; The discretion of the penalty was within the scope determined by the Food Safety Law, the Rules on the Application of Discretionary Power in Administrative Penalties of the Shaanxi Provincial Market Supervision Administration, and the benchmarks for Discretionary Power in Administrative penalties of the Food Safety Law, and the determination of the extent was not inappropriate. The court ruled to dismiss the party's lawsuit request.

In August 2022, The State Council inspection team received a report from the public on the "Internet + Supervision Platform of The State Council" regarding this matter. After visiting and investigating, it

determined that the case was "inappropriate in terms of punishment". After reviewing the food-related administrative penalty records of the Yulin Market Supervision and Administration Bureau from 2021 to August 2022, it was found that among the more than 50 penalties imposed on micro and small market entities, 21 had fines exceeding 50,000 yuan, while the value of their cases was only a few dozen or a few hundred yuan.

The fine decision in the Yulin celery case was mainly made in accordance with the Food Safety Law and the Administrative Penalty Law. This case meets the penalty circumstances stipulated in Article 124, Paragraph 1, Item 1 of the Food Safety Law, but does not meet the exemption provisions of Article 136 of the Food Safety Law and Article 33 of the Administrative Penalty Law. In recent years, local regulations on food safety have been continuously introduced and improved, and the administrative penalty law has been revised, but such cases of "excessive punishment but inappropriate punishment" still occur frequently. The Fuzhou celery case, which was reported last year, is another typical case, even more so than the Yulin celery case. Every time such cases occur, they cause great controversy in society, but the problem has not been effectively resolved. This is partly because the provisions of the current administrative penalty law are not detailed enough, administrative personnel have difficulty controlling discretionary power, and there is no corresponding post-event assessment and adjustment mechanism, resulting in mechanical application of the law and failure to play a role in settling disputes.

Based on the Yulin Celery case (hereinafter referred to as this case), with the aim of balancing the legality and rationality of legislation and law enforcement, this paper analyzes the imperfections of administrative legislation and the problems of administrative legal norms and law enforcement personnel involved in administrative law enforcement, and explores the optimization path in administrative legislation and law enforcement in response to the phenomenon of "excessive punishment and inappropriate punishment". In theory, this research topic can, first, enhance the coordination of the legal system, enhance the connection between administrative law and other laws such as the Food Safety Law, and play a certain exemplary role, thereby ensuring the uniformity and effectiveness of law enforcement; Second, it can fill legal gaps and deficiencies, refine legal provisions and regulate discretionary power, and enhance the operability and pertinence of the law. In practice, first, it can regulate administrative actions, strengthen supervision and restraint, and improve local governance capacity and administrative efficiency; Second, it can improve the quality of administrative law enforcement personnel and strengthen the construction of a high-quality legal system team; Third, it can better safeguard the rights and interests of citizens and the public interest, thereby enhancing the government's credibility.

2. Analysis of Existing Deficiencies

2.1 The shortcomings of the administrative penalty law

2.1.1 The provisions on mitigating penalties are too general

Article 32 of the Administrative Penalty Law is about lenient and mitigated penalties. In this case, the administrative authority applied the lenient penalty provision of this article to the couple Luo, but not the mitigated provision, on the grounds that they did not meet the provisions of the first four items of this article and there was no basis to activate the catch-all provision "regarding other circumstances as prescribed by laws, regulations and rules". This catch-all provision is a revision of the 2021 Administrative Litigation Law based on the original catch-all provision "other circumstances for which administrative penalties shall be mitigated or reduced in accordance with the law". Although it clarifies the contents included in the "law", it does not specify whether other normative documents are included in the catch-all provision or whether mitigating circumstances can be added. The literal interpretation alone has no connection, but it has not been excluded from the discussions of the legislators, and even the opinions of the State Administration for Market Regulation have been clarified. To refine the higher-level law and add mitigating circumstances in accordance with the principle of legality of penalties, it is necessary to explain the principle of legality of penalties and determine whether to increase the burden on the offender. If it reduces the burden on the offender, it would not be in line with the principle of reservation of infringement and would not violate the requirements of the principle of legality of penalties.^[1] In addition, compared with the previous provisions, the deletion of "in accordance with the law" from "shall be lawfully mitigated or reduced in administrative penalties" before the original listed circumstances also leaves room for the application of circumstances for discretionary mitigation of penalties. In light of the actual circumstances of the case, there should be far more circumstances for mitigation than those listed in this article, but there is no clear guideline on what specific criteria should be used for judgment, and the provisions for mitigation are not clear and difficult to initiate, which has

led to the current situation of overly heavy administrative rules in our country. Some scholars believe that the legal starting point of administrative penalties in some areas is not fully in line with the economic affordability of the parties concerned, which has become an urgent problem in China's administrative law enforcement; ^[2]Some scholars argue that some administrative norms have been questioned for their unreasonable penalties, with excessive penalties being one of the targets of questioning. ^[3] This is a true reflection of the problems in the field of administrative law enforcement and the public's distrust of government agencies.

2.1.2 The provisions on exemption from punishment have too much discretionary factor

Article 33 of the Administrative Penalty Law stipulates that no administrative penalty shall be imposed. This provision is general and mainly reflects the excessive empowerment of administrative personnel in the first paragraph. Article 1 stipulates two circumstances: one is the circumstances under which no penalty shall be imposed by law, that is, the violation is minor and corrected in a timely manner without causing harmful consequences; the other is the circumstances under which no penalty may be imposed, that is, the first-time violation with minor harmful consequences and corrected in a timely manner. There are three instances of discretionary power in this provision. First, the criteria for determining "minor" violations are questionable, and relying solely on the personal judgment of administrative personnel would lead to confusion in the application of the law; Secondly, regarding the determination of the "timeliness" of the correction of the violation, it is impossible to determine what "timeliness" is. In this case, is the effectiveness calculated from the date when the couple sold the remaining 5 jin of celery or from the date when the couple learned that there was pesticide residue in the celery? ; Finally, regarding the understanding of "can", it is unknown whether meeting the condition of "first violation with minor harmful consequences and timely correction" is a sufficient or necessary condition for exemption from administrative punishment.

2.2 Administrative law enforcement is unreasonable

The inflexible application of law is one of the important reasons for the unreasonable results of administrative law enforcement. The cause of mechanical law enforcement, apart from the insufficiency of the above-mentioned legal provisions, is to a greater extent the problem of the concepts and positions of law enforcement officers. Conceptually, law enforcement officers, especially administrative law enforcement officers, based on the prudent concept of risk aversion and the legitimacy concept of rule supremacy, strictly follow the principles of what must be done by law and what cannot be done without law, and exercise their powers in accordance with the law. After making the administrative penalty decision for this case and similar cases, even in the face of the public's "one-sided" duties, they firmly follow the professional rationalization thinking, thus creating the phenomenon of "mechanical law enforcement" that contradicts the public's naive legal feelings. From the perspective of stance, through the review and explanation of numerous cases of "minor demerits and heavy penalties", it can be found that law enforcers have emphasized "enforcement" too much and ignored "administration" in administrative law enforcement. That is to say, law enforcers generally follow a "de-administration" stance in the process of law enforcement, focusing too much on the implementation of legal provisions and ignoring the true purpose of public management. It is the law enforcers' adherence to the above concepts that leads to a narrow understanding of law enforcement issues, thus forming a "one-size-fits-all" law enforcement logic. ^[4]

In addition, the abuse of discretion by law enforcement officers is also one of the reasons for the low acceptability of administrative law enforcement. After the investigation of this case, the inspection team said that in some places, it is very common for administrative officials to use their discretionary power to enforce the law at will, impose harsh penalties, and not accept the penalties. On the surface, it seems that the lack of clear legal provisions leads to excessive discretionary power of law enforcement officers, but the root cause of the unreasonable use of discretionary power lies with the law enforcement officers themselves. On the one hand, there are regulations in some departments that link the number of cases handled and the amount involved to performance assessment, and law enforcement officers abuse their discretion to gain benefits in pursuit of performance. On the other hand, the professional competence of law enforcement officers needs to be improved, and some law enforcement officers lack the ability to comprehensively apply administrative legal norms and discretion. There is a lack of understanding of the principles, policies, guiding ideology and legislative purpose of administrative legal norms, which leads to having discretionary power but not knowing how to grasp the limits and use it reasonably.

3. Analysis of the need for Optimization

3.1 The principle of proportionality between offense and punishment

When it comes to issues concerning the people, it is necessary to accurately grasp the social mentality and the emotions of the people, fully consider the personal feelings of the law enforcement targets, standardize law enforcement words and deeds, and promote humanized, flexible and transparent law enforcement. Do not engage in rough law enforcement or the "entrusted violence" approach. Article 5, Paragraph 2 of the Administrative Litigation Law embodies the principle of proportionality between offense and penalty, stating that "the establishment and implementation of administrative penalties must be based on facts and be commensurate with the facts, nature, circumstances and degree of social harm of the violation." In essence, the principle of proportionality between offense and penalty requires law enforcers to carry out law enforcement activities in a more "humanized" manner, with respect and protection of human dignity as the main goal and the integration of values such as understanding, tolerance and care into law enforcement activities.^[5]

It is clear through this case that "the law should be warm, allowing the people to feel the humanity, flexibility and rationality of law enforcement", and the principle of proportionality between offense and punishment requires that legislation, administration and judiciary should work together to explore an optimized path of administrative law enforcement that takes into account both legality and rationality. This means that administrative law enforcement must reverse the narrow perception of replacing legality or legitimacy with "legality", and fully recognize the important role of the general public in administrative law enforcement. In this way, the full participation of the general public in the law enforcement process, substantive expression, protection of legitimate rights and interests, and acceptance and recognition of the law enforcement results should be regarded as the basis of the legality or legitimacy of law enforcement.^[4]

3.2 A necessary stage of balancing legal reasoning and emotional reasoning

The public debate on this case may seem to be about the dispute between the Luo couple and the regulatory authorities, but the underlying reason is the dispute between law and reason. The regulatory authorities enforce the law in accordance with the legal procedures and meet the requirements of legality, but fail to meet the perceived rationality in the minds of the people. In today's society under the rule of law, although legality is the bottom line, as our society under the rule of law, it is a society with Chinese characteristics and integrated with the traditional virtues of the Chinese nation. When it comes to this case, the common people seek substantive justice in the individual case and the fairness of the outcome in everyone's mind, not just "compliance with the law". "Law is not just cold and impersonal provisions; it is filled with emotion and righteousness behind them. We must adhere to basing our efforts on the law, convincing people with reason and touching them with emotions".^[6] Therefore, we should not merely adhere to the bottom line of formal "legality", but rather coordinate and integrate rigid administrative legal norms with the lubricant of reason and emotion, so as to take into account both legal and social and political effects.^[7] In conclusion, the thinking and exploration based on this case that can promote the integration of law and reason in administrative legislation and law enforcement is an attempt to balance the deeper disputes between law and reason in every legal issue, and it is also a necessary process to improve the law of socialism with Chinese characteristics and build a law-based China.

4. Attempts to optimize the path

4.1 Refine the relevant provisions of the Administrative Penalty law

There are many cases like this one where minor violations result in huge fines, and law enforcers tend to follow the general logic when making a comprehensive consideration, and fail to pay more attention to the particularity of the case. When it comes to the application of the law, since the Administrative Penalty Law and its related provisions are rather general, a clearer and more accurate approach is often adopted, applying lenient penalty provisions rather than mitigation provisions that require more comprehensive consideration. The law enforcement inspection team of the Standing Committee of the National People's Congress mentioned in its report on the inspection of the Food Safety Law of the People's Republic of China that minor violations have problems such as high fines and difficulty in enforcement.^[1] In response to the current excessive penalties for such cases in China, efforts should be made to refine the relevant provisions of the Administrative Penalty Law and regulate the discretionary

power of administrative personnel.

The Administrative Penalty Law should appropriately add or allow other normative documents to add conditions for mitigation of administrative penalties, or add more considerations related to mitigation of penalties, so as to lower the threshold for the application of mitigation of penalties, increase the basis for consideration of mitigation of penalties, and increase the frequency of application of mitigation of penalties, so that minor violation cases can be handled more justly and reasonably. In addition, Article 34 of the Administrative Litigation Law, which was revised in 2021, added provisions on the benchmark system for administrative penalty discretion, but it should be further refined. In August 2022, The General Office of the State Council issued the "Opinions on Further Standardizing the Formulation and Management of Administrative Discretion Benchmarks", which pointed out that in terms of fines, particular emphasis should be placed on "refining specific details in accordance with the law and reasonably, quantifying the extent of fines, resolutely avoiding arbitrary fines, strictly prohibiting revenue generation through fines, and strictly prohibiting ranking or using the amount of fines as an indicator for performance assessment". In light of this, the Administrative Litigation Law can provide further instructions on the formulation and management of administrative discretion benchmarks in accordance with the economic development levels of different regions, down to the specific scope, so as to prevent significant differences in regulations or even no regulations at all.

4.2 Law enforcers should accurately grasp the discretionary power

Regarding the administrative penalty result in this case, some people think that the law enforcers strictly followed the explicitly stipulated provisions of the law and were inflexible. Others believe that the law enforcers enforced the law arbitrarily and made arbitrary determinations on matters not clearly stipulated by the law. In fact, these two viewpoints essentially reflect the same problem, that is, the administrative staff did not accurately grasp the discretionary power.

The accurate grasp and application of discretion can be improved in the following three aspects: First, in combination with legal principles. The basic principles of administrative law are the fundamental norms that guide and regulate the legislation and enforcement of administrative law, as well as the implementation of administrative acts and the handling of disputes. The application of legal principles in administrative law enforcement can overcome the purposefulness, lack of extension, ambiguity and lag of written law, thereby guiding the making of more reasonable administrative decisions;^[8]Second, refer to common sense of the law. Legal common sense is "common and shallow knowledge of experience, common and simple emotions and attitudes, and common and self-evident basic principles that are owned by ordinary people in society and naturally applied in their daily lives, which are related to or have legal significance^[9]". To some extent, professional legal knowledge is based on public legal common sense, and law enforcers should respect legal common sense in their daily lives and use it as a reference in the process of administrative law enforcement. After the "celery case", a commentary article published by a Guangming Online commentator pointed out : "It is not that food safety should not be strictly regulated, but rather that there should be more warmth and tolerance in the supervision process. The purpose of regulation is to develop, to prosper, to be vigorous, not to be alarmed ";^[10]Third, consider the justice of individual cases. For cases like this one, which are closely related to people's lives and where punishment in accordance with the law could lead to injustice, law enforcers should not only consider general normative justice based on the concept of legitimacy, but also consider the social effects that need to be achieved in handling such cases, through the overall consideration of the guidance of public policy, the stability of the market economy, and the public opinion demanding good and good laws. A combination of legal application methods should be used to achieve fairness and justice in individual cases.

4.3 Strengthen the guidance and supervision mechanism for the enforcement power of administrative penalties

Administrative penalty cases are filed and investigated by the agency itself, penalty decisions are made by the person in charge of the agency, and the higher authorities supervise and inspect the lower authorities. The power is overly concentrated. Small entities like this case are already unable to bear the complexity and time-consuming cost of the litigation process, and it is even more difficult to achieve the purpose of correcting the penalty decision under such a situation of concentrated power. Therefore, it is necessary to strengthen the effective checks and balances and supervision of the administrative penalty enforcement power.

To improve the guidance mechanism for administrative penalty enforcement, the following two

aspects should be addressed: First, the business environment should be continuously optimized. All fine items that are not in line with the needs of economic and social development, violate the spirit of the "streamlining administration, delegating power, improving regulation and upgrading services" reform, or are unfair or have been punished improperly should be cancelled or adjusted. Local experience should be summarized and summarized, and a national list of exemption from penalties should be issued in due course. Secondly, modern digital technology should be utilized to achieve smart supervision. We should accelerate the establishment of a modern traceability system and mechanism that is unified in terms of system, standards, requirements and mechanisms, and can be jointly governed and shared across multiple departments such as agriculture and rural affairs, market supervision and customs, and can be traced in a timely and effective manner across provinces, cities and counties to effectively prevent and control food safety risks.^[11]

In the process of law enforcement, some departments believe that the heavier the penalty, the better, and only focus on post-event penalties while neglecting pre-event and in-event supervision. This is also the problem of insufficient supervision in the current law enforcement of administrative penalties in our country. For pre-event supervision, a supporting pre-event filing and review system should be established, and the norms and facts involved should be re-analyzed and re-examined in cases where the actual amount involved and the fine amount or the nature of other fine results vary greatly as stipulated by law. For post-event supervision, it is necessary to improve the government inspection system in a coordinated manner, further clarify the inspection relief procedures and the relationship between inspection and judicial trials and media supervision, so that more cases can benefit from the government inspection system. In this case, the importance of government supervision is also reflected. The second is to coordinate and improve the media supervision system. The Supreme People's Court has issued several provisions on the acceptance of public opinion supervision by the News media by the People's Courts. However, the provisions are rather principle-based and rarely strictly enforced, especially in the era of the Internet and self-media, more regulations should be imposed on the media. In terms of legislation, a more detailed and comprehensive media supervision system should be stipulated in terms of the types and ranges of penalties. In terms of law enforcement, supervision of the enforcement of malicious or inaccurate media reports should be strengthened, so as to clear up the chaos of media reports and better play the role of media reports in administrative law enforcement supervision.

5. Conclusions

With the improvement of the socialist legal system with Chinese characteristics in our country and the improvement of the level of social ideology and culture, more and more problems have been exposed in administrative legal norms. From the perspective of the Yulin Celery case introduced in this article, we can see both the lack of content in the legislative aspect of administrative legal norms and the deficiency of the lack of consideration of "reason and emotion" in China's administrative law enforcement. Starting from the two macro levels of legislation and law enforcement, this paper analyzes the prominent problems reflected in this case and explores the realization path of "rationalized" legislation and "humanized" law enforcement from the starting point of balancing legal and emotional principles. In conclusion, for cases involving small violations but high fines, it is necessary not only to improve the legal provisions and enforce the law rationally to maintain the legal order and general justice, but also to enhance the comprehensive quality of legal workers, to achieve the integration of legal reasoning and emotion in the process of legislation and administration, and to build a new socialist administrative approach with Chinese characteristics in the new era.

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