

E-Government Construction and China's Administrative Litigation Act

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INTRODUCTION

E-government has become a part of our society gradually as a derivative of the current information society. To adapt to international affairs, the country's economic development and social progress, China should expedite the transfer from a traditional superintendent government to a modern service government by building an e-government. However, there are many obstacles in the way of popularizing e-government. The "validity" and "reliability" of e-governance are key problems, because China's administrative legal system hasn't made specific laws and regulations on e-governance administration. In the current situation, it is of great and practical importance to discuss the new characteristics of e-government administration and understand the influence of information on the administrative legal system.

BACKGROUND

Constructing an e-government means building a public-centered e-government through reorganizing the government by information technology, improving the public service, building up public participation, publishing government affairs and democracy, accelerating government office automation and, overall, sharing information resources and enhancing the efficiency of public administration, the rationality of public decision-making and the flexibility of government organs.

The e-government network project was sponsored by more than 40 Ministries and Committees of the State Council in January, 1999, in China. Driven by the central government, the Web sites of Ministries and Commissions of the State Council are getting more in numbers and richer in content. There is new progress in many fields, such as the issue and delivery of policy and information service. That is, the issue of the government announcements on the Internet, the application for import and export qualification, the collection of the suggestions on "The tenth five years' plan of the state economic development." The overall government information system will be accomplished by executing an e-government project,

paperless documents, network decision-making and electronic public-service. E-government becomes a window through which the government displays its perfect image and provides its service for citizens, corporations and other organizations.

Since 2000, local governments accelerated their steps of e-government construction. For example, by the end of 2000, Beijing had already set up the public information platform and government affair network. A series of information databases that can handle the information of enterprises, population and city planning have been established. One hundred twenty-three branches of the Beijing government own the Web sites in the Capital Public Information Platform. In addition, at the beginning of 2001, Beijing Municipal stated that it will generally realize the network transaction of the examination and approval, administration, and service business for the enterprises and public within the next 2 years and realize electronic and network offices inside. Based on these, the e-government network system with perfect function, reasonable structure, high-speed broadband and interactive administration network will be completed by the end of 2005. The government affair informatization will be realized by using interactive artificial man-machine administration.

It is reported that there are nearly 4,000 fully qualified Web sites marked with ".gov" in different levels of local government in China. Most country-level governments have established their Web sites or home pages on the Internet and issued government affair information through the Web. Some developed areas did better than other regions. The network coverage of each district, county and bureau in Beijing is 94%. Sixty-five counties and cities in Jiangsu Province and 276 government organs in Shandong Province have their own Web sites. Henan Province has its network in four levels of governments (province, city, county, and countryside). Especially, Guangzhou established the high-class Government Information Network exchange platform, as well as a three-level government information network system, including city, district and street. At present, there are 56 Web sites, about 20 e-post offices and more than 300 databases for internal information and public service. The information resource exchange and sharing system has become shaped

in this way. Network offices include the administration of city planning, industry and commerce, customs, taxation affairs, finance, human resources, employment, police affairs and population. For example, District Tianhe in Guangzhou completely automated its office and document transaction network.

FUTURE TRENDS

Administrative litigation, namely judicial review, is not only one kind of legal supervision system for government administration, but also a kind of administrative legal relief system for the administrative counterparts. Such a supervision mechanism in national institutions aims at supervising the authority of the government so as to guarantee citizens' rights.

The construction of e-government brings challenges to China's legal system while benefiting the administrative counterparts and enhancing the efficiency of the government.

The Challenge of the Legality Censor of the Administrative Procedure

The most important symbol of administration by law is the legality of administrative procedures. Administrative procedures contain the manner and steps of administrative action. Legality of the administrative procedure is a very important statutory requirement of the courts maintaining administrative action. E-government makes things complicated.

Whereas the control mechanism is weak in maintaining citizens' rights and interests, many countries constituted the administration procedural law to protect the legal rights and interests of the administrative counterparts, restrict the administrative action and prevent the government from abusing administration authority after World War II. Although China doesn't have a uniform administrative procedure act, many regulations on administrative action do exist. Each country's regulation on the manner of administrative action normally requests that the administrative action must be sufficient and positive in content.

"The parties should be informed in written form except some special cases" (Huaide, 2000, p. 232). Written form is different from oral form. Some solid materials are used as the medium to act on people's sight. Because paper is good for carrying, writing and preserving, it becomes the most popular writing material. Written form in our daily life refers to the paper used for writing. In the law documents, that is, "written form." Written form accords with the exact requirements of modern administration, so administrative law requires administrative organs to execute administra-

tive action in written form, and this requirement turns out to be one of the essentials for the effectiveness and validity of administrative action. For example, Spain's Administrative Procedure Act (no. 55) prescribes that administrative action must be in written form unless other more suitable expressions or demonstrations are allowed. China's Administrative Sanction Law (no. 39) also makes it clear that the administrative sanction should be a formal and written one. Furthermore, in no. 3, the administrative sanction is action of nullity if it doesn't follow the legal proceedings. Using the written form can not only remind the government to be careful with its decision-making but also protect the legal rights and interests of citizens, corporations and other organizations who can prove the administrative dispute by bringing forth the written form of administrative action to the court when they are suing. Constituting law in written form becomes an obligation of the administrative organs.

E-governance is supported by an information network, so electronic documents come out. There are many differences between an e-document and a written one: (1) the automatic readability of information; (2) the reliance on an electronic system, as the e-document relies on certain electronic hardware, operating system and application software; (3) the non-information of the carrier. The paper document together with the handwriting and seal proves the original identity, while an e-document has no such identification; (4) flexibility of handling information. People can edit e-documents freely without being noticed. Most current administrative law and regulations do not prescribe e-government administrative action, so it is very difficult for the court to check the validity of the e-government action in the administrative litigation.

There will be more and more administrative cases concerning e-government. The legislative draft of administrative procedures stipulates that administrative organs have free judgment right on using e-administration while the administrative counterparts have free will. How to balance the relationship between administration and law is a new problem in front of the court. For example, if the administrative organ employed an action that the counterpart disliked, the party considered that the administrative action had no law gist and appealed discharging. What would the court do? According to the administrative litigation act, the court should discharge the administrative action when the procedure is transgressing. Discharging will frustrate the construction and improvement of e-government because it does accord with the national policy and the trend of law. But there is no gist for not discharging. Above all, we had better perfect the concerned legislation and justice explanation as soon as possible while having enough mental preparation for meeting unexpected trouble in the checkup of administrative litigation validity.

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