

Developments in the Law in 2010: Administrative Law

Ming-Chiang Lin^{*}

Abstract

Reviews on the Judicial Decisions of Administrative Law are composed of two sections, respectively general theories of Administrative Law and specific theories of Administrative Law. The former section includes theories and principles of administrative law, administrative agency law, administrative law, and administrative remedies law. The specific theories of Administrative law will not be discussed here. Aiming at 14 interpretations by the Constitutional Court, significant cases by the Supreme Administrative Court, and the resolutions by its judge panels, recent amendments of Administrative Law by the Legislative Yuan, important decisions and implementation measures by the administrative agencies, this article conducts a comprehensive introduction and brings about concise comments.

Among the interpretations by the Constitutional Court, the Grand Justices have made further elaboration on the principle of proportionality, equal protection of the law, the principle of legitimate expectation, and the principle of taxation by law. Most noteworthy is the interpretation of No. 670. In this interpretation, the theory of “special sacrifice” is extended to the sphere of people whose personal freedom is infringed. (ex. Being kept in detention) It also delicately elaborates on the difference between national compensation and loss redemption, enhancing the completeness of the laws of state responsibilities.

In the decisions by the supreme administrative court, the scope of cases allowed to petition for state compensation is broadening continuously. Specifically, the administrative court now allows citizens to file litigation for

^{*} Professor of Law, College of Law, National Taiwan University.
E-mail: linmc@ntu.edu.tw

state compensation if they bring such claims along with their claims of confirmation and revoking certain administrative decisions. This trend has made the administrative court and the civil court two parallel and also competing routes for people to sue the government for compensation, so it is very worthy of note.

In the aspects of amendment by the legislation, Central Government Agency Personnel Law, temporary regulations for the function and reorganization of Administrative Yuan, Basic Law of Central Administrative Organization, and the Organization Law of the Administrative Yuan affect central administrative agencies most. The amendment of Local Government Systems Law, in line with the birth of the new five cities, drastically impacts and changes the organization of local government. Furthermore, the amendment of administrative litigation law and administrative execution law solves several troubling problems in some judiciary and administrative practices.

In administrative policy and its implementation, the amendment of public servant retirement law makes the favorable pension plan of 18% of saving interests for retired public servants and school teachers legalized and caught attention and discussion from the whole nation. These are all spotlights when looking back to administrative law.

Keywords: special sacrifice, state tort compensation, the four laws of administrative organization, Local Government Art, regulations governing the favorable interest for the pension of retired public functionaries