Claims for Declaratory Judgment and Pre-enforcement Review of Regulations：A Comparative Study of German and Taiwan's Institutional Development

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Abstract

Modern regulatory states inevitably control social order by administrative norms. However, individuals are not pure manipulative objects of administrative norms. If their rights are violated by illegal or invalid administrative norms, the administrative court must grant effective remedy. Under Taiwan's current system of administrative litigation, one of the core issues is, if claims for declaratory judgment can be lodged as pre-enforcement review of regulations. Hitherto, only three decisions of administrative court confirmed pre-enforcement review of self-executing norms. Systematic legal writing in this regard is still lacking. So far no motion on preventive claims was granted, one decision even denied the admissibility of preventive claims for declaratory judgment. When the self-executing norms set requirements for action or inaction, violation of which will be subject to penalties or administrative sanctions, requiring individuals to seek relief afterwards is tantamount to hanging the sword of Damocles over his head. Since W. Jellinek initiated claims for declaratory judgment as pre-enforcement review of regulations, theories and practice have experienced evolution for nearly a hundred years. Through the analysis of the German system, this paper highlights claims for declaratory judgment as effective tool against normative wrongs. On the basis of comparative law, the author points out Taiwan's deficits to implement pre-enforcement review of regulations, and make some recommendations for improvement.

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