

The Definition of the Applicant's Qualification for Administrative Reconsideration

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ABSTRACT

Administrative reconsideration is an supervision mechanism. When citizens, legal persons or other organizations' legitimate rights are violated by administrative acts, the law gives them the right to apply for reconsideration for rights protection. Given current practical problems, this paper proposes corresponding solutions to constantly improve the provisions about the qualifications of administrative reconsideration applicants and maintain social stability and harmony.

KEYWORDS

Administrative Law; Administrative Reconsideration; Applicant's Qualification

1 Introduction

1.1 Connotation of Administrative Reconsideration

With the development of the times and the deepening of social transformation, social interests are diversifying, and demands for government public goods are more stringent. In meeting diverse needs, disputes between the government and counterparts, which are diverse and complex, pose challenges to governance. Administrative reconsideration system has dual functions of supervising administration and relieving rights and interests.^[1] Thus, quickly resolving administrative disputes has become a governance focus, giving rise to administrative reconsideration.^[2]

For the administrative organs, administrative reconsideration is an internal supervision mechanism. After an administrative organ takes a specific administrative act, a higher level or special reconsideration organ examines its legality and rationality to correct illegal or improper acts.^[3] Moreover, compared with external supervision, administrative reconsideration organs often have strong professional knowledge in relevant administrative fields and are familiar with administrative rules and policy.

For citizens, administrative reconsideration is the first remedy when their rights are violated by administrative acts. In many instances, if citizens disagree with an administrative act, they must go through administrative reconsideration before filing an administrative litigation. It offers a convenient platform for citizens to directly claim rights, correct the wrong acts, and safeguard rights and interests.^[4]

1.2 Connotation of the Applicant's Qualification for Administrative Reconsideration

An applicant for administrative reconsideration refers to a citizen, legal person or other organizations who files an application for administrative reconsideration, considering that a specific administrative act infringes upon their lawful rights and interests.

The applicant must prove the legitimate rights and interests, including personal, property, and education rights, have been or may be directly or indirectly affected.^[5] For instance, in environmental administrative application, surrounding residents, though not direct counterparts of the permitted behavior, can be interested parties as the project may affect their living environment and health rights.

1.3 Legal Foundations of the Applicant's Qualification

1.3.1 Evolution

From 1950 to 1990, administrative reconsideration concepts were first legislated but provisions were scattered in individual acts. In 1990, *the Administrative Reconsideration Regulations* systematically established the system. In 1999, *the Administrative Review Law* marked the development of administrative reconsideration system to a new stage, and provided a unified standard for the qualification of administrative reconsideration applicants. It is clear that when citizens, legal persons, or other organizations believe that a specific administrative act infringes upon their legitimate rights and interests, they may file for administrative reconsideration. This initially established the requirement that the applicant must have an interest in the specific administrative act. The two amendments in 2007 and 2009 optimized some expressions. In 2023, the newly revised *the Administrative Review Law* further expanded the scope of administrative

reconsideration, and the applicant is no longer limited to the counterpart of the administrative act. As long as it has an interest in the administrative act, it can apply for administrative reconsideration as an applicant, better protecting the rights of citizens, legal persons and other organizations.^[6]

1.3.2 Current Legal Provisions

According to the *Administrative Review Law of the People's Republic of China* (amended in 2023) and relevant implementing regulations, the applicant for administrative reconsideration must be a citizen, legal person or other organizations, including the direct counterpart and the interested party.^[7]

The direct counterpart is the one directly related to a specific administrative act. In administrative reconsideration, a direct counterpart usually has clear applicant's qualification. For instance, Kim bought two bottles of expired beer at a supermarket and reported it to the Market Regulation Administration. After investigation, the Administration decided not to punish the supermarket due to minor violations. Kim applied for administrative reconsideration to the district government. As the purchaser, Kim is the direct counterpart of the Administration's reply. Since he bought beer and thought his consumer rights were violated, he is eligible to apply for reconsideration.

An interested party is a citizen, legal person or other organizations not directly targeted by a specific administrative act, yet whose rights may be affected.^[8] For example, a municipal Planning Bureau issued a construction permit to a real-estate developer, Company A, for a high rise building. Surrounding residents like Li believed the building would affect their lighting and ventilation. So they applied for administrative reconsideration to the municipal government, asking to cancel the permit. Li and others aren't direct counterparts of the administrative licensing act, but their adjacent rights are substantially affected, so they have an interest in the act. By the definition of applicant's qualification, they qualify as administrative reconsideration applicants. They can go through the reconsideration process, asking the organ to review the legality of the act to safeguard against improper administrative acts.^[9]

2 Issues

2.1 Ambiguity in Judging the Relevance of Equity

In practice, there are disputes over which rights affected by administrative acts can grant applicant eligibility. For example, in some administrative decisions involving the allocation of public resources such as the adjustment of public transportation lines, the convenience of travel of residents along the line may be affected. But whether this convenience is legally recognized as a sufficient interest for applicants has different conclusions based on different understandings. Broadly, residents' travel convenience impacts life quality and should be protected. Narrowly, such rights may not be clearly in the scope of statutory rights, leading to ambiguity in identifying applicant's qualification.

In addition to personal rights and property rights, which are two relatively clear types of rights and interests, the status of other emerging rights and interests such as environmental rights and cultural rights in the qualification determination of administrative reconsideration applicants is also unclear. For instance, when an enterprise's emissions are regulated by the environmental protection department, nearby residents may claim their environmental rights are infringed. But as the legal connotation and extension of environmental rights are ambiguous, it's uncertain whether residents can qualify as administrative reconsideration applicants on the basis of damaged environmental rights.

2.2 Dilemma of Defining the Qualifications of Applicants in Special Fields

In administrative acts concerning public interest, determining applicant's qualification on behalf of it is a tough issue. For example, in the process of large scale infrastructure construction projects such as airport construction and highway construction, many public interests will be involved. When administrative organs plan and approve such projects, individual citizens may feel their interests are affected, yet it's hard to tell if they can represent public interest in administrative reconsideration. In theory, public welfare organizations can act as representatives, but there are no clear rules on their subject qualifications and representative scopes in administrative reconsideration, making it difficult to determine applicant's qualification in relevant cases.

Moreover, the definition of public interest is ambiguous. Different people may understand and measure it differently, resulting in a lack of clear criteria for judging an applicant's qualification based on impaired public interest. For example, for the renovation project of the old residential area in the city, some residents may think that the increase of commercial facilities after the renovation will destroy the quiet environment of the residential area and affect the public interest. However, some other residents may think that the increase of commercial facilities will improve the convenience of life in the community and is conducive to the public interest. This different understanding of public interest is likely to cause disputes in the qualifications of administrative reconsideration applicants.

2.3 The Ambiguity in Judging the Boundary with Administrative Litigation Applicant Qualifications

Administrative reconsideration and administrative litigation have differences. Reconsideration has a broader scope, with some internal and abstract administrative acts admissible under certain conditions, while litigation is stricter on such acts. Administrative organs may review internal administrative acts such as the appointment and removal of their internal staff in the course of administrative reconsideration according to specific circumstances. But litigation usually doesn't accept such cases. This scope disparity confuses parties choosing relief channels. When unsure if their cases meet litigation's acceptance criteria, they may first try reconsideration. But there are connection issues between them during the reconsideration process.

In some emerging administrative fields, such as network supervision and big data application, the scope of accepting cases of administrative reconsideration and administrative litigation may not be clearly defined, and the two develop at inconsistent speeds. The scope of administrative reconsideration may be adjusted relatively quickly in these areas due to its flexibility, but the updating of the rules of administrative litigation may be relatively delayed. This makes it difficult for the parties in these administrative disputes to accurately judge their qualifications in the two relief channels, which affects the timeliness and effectiveness of relief.

3 The Necessity for Expanding the Applicant's Qualification and the Paths

3.1 Necessity

3.1.1 Safeguard Citizens' Rights

The core purpose of the administrative reconsideration is protecting and remedying the legitimate rights and interests of citizens, legal persons and other organizations.^[10] With the development of society and the progress of the rule of law, a variety of new and complex interest relationships continue to emerge. It becomes necessary to continuously loosen the requirements regarding applicant's qualification, so that more people affected by administrative act can safeguard their legitimate rights and interests via administrative reconsideration, and ensure that citizens' rights are fully protected.

3.1.2 Supervise Administrative Organ

Administrative reconsideration is an important way to supervise administrative organs to exercise their functions and powers according to law.^[11] With citizens' awareness of the rule of law growing, by clarifying applicant's qualification, more citizens, legal persons and other organizations are encouraged to participate in administrative reconsideration, supervise administrative act of the organs, promote administrative organs to exercise power in a more standardized and fair manner, and improve the level of administrative organs' law based governance.

3.1.3 Resolve Administrative Disputes

As an efficient and convenient dispute resolution mechanism, administrative reconsideration is designed with the legislative intention to resolve administrative disputes in a timely manner and maintain social stability and harmony. The continuous improvement of applicant's qualification provisions for administrative reconsideration will help more administrative disputes be settled through administrative reconsideration channels, avoid the intensification and escalation of contradictions, and improve the efficiency of administrative dispute resolution.

3.2 Paths

3.2.1 Clarify the Criteria

To solve the problem of unclear rights and interests scope, the legislature should detail the scope of rights and interests in administrative reconsideration through legal interpretation or supplementary legislation. Also, clarify the status of emerging rights like environmental and cultural rights in administrative reconsideration, considering international conventions and domestic practices. For example, regarding environmental rights, reference can be made to international documents such as *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. Based on this, citizens' specific environmental rights, such as the right to clean air, the right to clean water and the right to tranquility, can be included in the scope of administrative reconsideration rights.

3.2.2 Expand the Scope of Qualifications in Special Fields

For special areas such as public interest, environmental protection, and consumer rights protection, special rules

regarding applicant's qualification should be formulated. Meanwhile, it is necessary to clarify the scope of their rights and the conditions for exercising these rights, and relax the requirements for applicant's qualification.^[12] For example, legislation should clarify public welfare organizations' subject qualifications and representation scope in administrative reconsideration. Stipulate that those meeting standards in establishment, funding, and articles of association, and legally registered with the civil affairs department, can file relevant public interest administrative reconsideration cases. Also, clarify their public interest representation scope, like service object scopes in articles of association, to define representation boundaries.

Establish a public interest measurement mechanism to determine the content and scope of public interest through public participation. In administrative reconsideration cases involving major public interests, such as large scale infrastructure construction projects, the reconsideration organs can organize public hearings, invite stakeholders, experts, scholars, community representatives, etc., to listen to the opinions of all parties, and comprehensively judge whether the administrative act is in line with the public interest, and which subjects can be used as applicants representing the public interest.

3.2.3 Formulate a Dynamically Adjustable Mechanism

Establish a mechanism to timely adjust applicant's qualification considering social development and administrative practice needs. Unify the criteria for the scope of accepting cases for administrative reconsideration and litigation, and coordinate their scope of case acceptance. Clarify and unify the admissibility conditions of internal and abstract administrative acts in both relief channels. For internal administrative acts, except for personnel management acts like civil servant appointments and dismissals that involve basic rights, for others (such as internal information disclosure and resource allocation) that may affect the rights of citizens, legal persons, etc., determine the scope of case acceptance by their external effects, and maintain the same judgment standard in administrative reconsideration and litigation.^[13]

In emerging administrative areas, a joint research mechanism is established. In which judicial organs and administrative reconsideration organs jointly study the characteristics and types of administrative disputes, and timely adjust and unify the scope of accepting cases. For example, in the field of network supervision, concerning disputes caused by administrative supervision behaviors of online platforms, timely clarify which behaviors can be accepted in administrative reconsideration and administrative litigation, so as to avoid the situation that the scope of cases accepted by the two relief channels is inconsistent.

4 Conclusion

In summary, administrative reconsideration is an important remedy when citizens' rights are violated by administrative acts. The rights of citizens, legal persons, and unincorporated organizations can be directly or indirectly affected, allowing them to apply for reconsideration. Currently, there are issues in determining the qualifications of administrative reconsideration applicants, and relevant laws should be continuously improved to safeguard rights and resolve administrative disputes.

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References

- [1] Zhang Jiansheng. On the appropriateness review of administrative reconsideration [J]. Zhejiang Social Sciences, 2024, (02): 30-41+156.
- [2] Deng Youwen. The reality dilemma, function orientation and system Optimization of Administrative reconsideration mediation [J]. Chinese Administration, 2023, (01): 29-35.
- [3] Guo Liping. Review and Improvement of Administrative Review Suspension System [J]. Journal of Henan University of Economics and Law, 2024, 39(06): 156-166.
- [4] Liu Quan. Reconstruction of the relationship between Administrative Reconsideration and Litigation from the perspective of Main Channel [J]. Journal of China University of Political Science and Law, 2021, (06): 141-152.
- [5] He Qibing. The Basic positioning of applicant qualification criteria for Administrative reconsideration: From the perspective of difference between the purposes of administrative reconsideration and administrative litigation [J]. Law of China, 2015, (12): 39-48.
- [6] Gao Jiawei. On the Role and functional orientation of Administrative reconsideration Organs in substantive dispute resolution [J]. Law Science (Journal of Northwest University of Political Science and Law), 2019, 41(02): 143-151.
- [7] Liang Junyu. Re-debate on the Functional Positioning of Administrative Reconsideration -- Commentary on the Administrative Reconsideration Law (Revision)(Draft for Comment) [J]. Journal of Soochow University (Law Edition), 201, 8(02): 9-21.

- [8] Ma Huaide. Institutional Innovation of the main channel for resolving Administrative disputes: Interpretation of the revision of the Administrative Reconsideration Law [J]. Law Review, 2018, 42(02): 1-10.
- [9] Guo Xiujiang, Lin Lu. Some Practical Issues on Administrative Reconsideration and Litigation Response [J]. Journal of Application of Law, 2023, (05): 113-125.
- [10] Zhang Jiansheng. On Administrative Reconsideration as a right Relief System [J]. Law, 2021, (05): 47-59.
- [11] Jiang Bixin, Ma Shiai, Reform and Improvement of Administrative Reconsideration System: Theoretical Framework based on System Analysis [J]. Journal of China University of Political Science and Law, 2021, (06): 94-109.
- [12] Cao Liu. Value Stance and Core Issues of Administrative Reconsideration System Reform [J]. Contemporary Law, 202, 36(02): 44-54.
- [13] Lian Yuqiang. The Relationship between the Functional Orientation of Administrative Review and the scope of accepting Cases [J]. Journal of National Academy of Procurators, 2023, 31(02): 128-142.