

Study on the Dilemma of Due Process in Maritime Law Enforcement and Countermeasures

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Abstract

The principle of due process originated in the British common law of natural justice, and although it has not been clearly expressed in our legislation, it has become one of the basic principles of administrative law in practice. As an important part of maritime rights enforcement, maritime administrative law enforcement plays a positive role in safeguarding China's maritime rights and interests and maritime security order. Through an in-depth study of China's maritime administrative law enforcement procedures, the article summarises the problems that exist in the implementation of maritime administrative law enforcement due process and puts forward corresponding countermeasures, with a view to providing ideas for promoting the improvement of China's maritime administrative law enforcement procedures, and to promote the standardisation, high efficiency and scientific development of maritime administrative law enforcement due process.

Keywords

Maritime law enforcement, due process, administrative law enforcement.

1. Introduction

The principle of due process originated in the United Kingdom as natural justice, and has been gradually applied in the field of administrative law along with the rise of administrative procedural law in order to further regulate the administrative acts carried out by administrative organs. With the development of society, the legal principles from the initial no fixed scope to now its content is more and more full, due process principle is also so, from the overall point of view, the maritime law enforcement due process refers to the maritime administrative organs in the exercise of power, should comply with the minimum procedural justice.

Taking the ConocoPhillips oil spill case as an example, this oil spill case aroused widespread concern in the society at that time, when the State Oceanic Administration (SOA) Beihai Branch received a report from ConocoPhillips China Ltd. stating that a small amount of oil film of unknown origin had been found on the surface of the sea northeast of a certain oil field in Penglai, and that ConocoPhillips reported again on 8 June that it had found seepage on the seabed of the seabed in the northeast of the vicinity of a natural fault line. ConocoPhillips later explained the cause of the oil spill as follows: during its water injection operations, pressure was exerted on the reservoir layer to activate the natural fault, resulting in the spillage of crude oil from the cracks in the fault. Thereafter, the State Oceanic Administration's Beihai Branch issued a public announcement for the whole society to openly select and employ a legal service organisation as the main one, supplemented by a number of legal service organisations as the legal service team to act as the agent for the Bohai Oil Spill Claims case. It is documented that the oil spill resulted in the pollution of more than 60,000 square kilometres, bringing great harm to China's marine ecology. When there is an incident of pollution of the environment such as oil spill from a ship at sea, the maritime administrative and law enforcement authorities

should promptly investigate the scene of the crime, among other things. When the administrative authorities investigate and deal with illegal acts, if they find the fact of illegal acts, they can not be replaced by administrative penalties, but must be transferred to the public security authorities, and according to the provisions of Article 338 of the Criminal Law of the People's Republic of China, the act of the oil leakage has already constituted the crime of environmental pollution, but in the end the relevant actors have not been subjected to any sanction of criminal responsibility. It can be seen from this that in maritime law enforcement, there are some cases that are not included in the criminal procedure, and that there is a need for further reflection on the relationship between administrative law enforcement and criminal justice, as well as on the due process of maritime law enforcement.

2. Overview of the doctrine of due process in maritime law enforcement

In the context of the era of building a strong maritime nation, maritime law enforcement occupies an important position in society. Procedure from the close contact of human social life, the legal perspective of the procedure embodied in the human desire for order and norms, is a powerful weapon to protect their rights. The principle of due process is an important basic principle of administrative law, but also in the process of administrative power to follow the important norms, in China's administrative justice plays an increasingly important role, and is widely used. The principle of due process in our country has made the theoretical consensus, in practice, the application of the deepening, for the realization of fairness and justice in administrative justice plays a huge role. The principle of due process refers to the administrative trial, the 'due process' as the basis for judging the legality of administrative acts, and at the same time with the principle of procedural due process review of the exercise of administrative power. Review of administrative action also further reflects the judicial power to administrative power supervision, but also the administrative rule of law is an important measure of modernisation. The principle of due process, as a basic principle of administrative law, is consistent with the pursuit of modern constitutional values. In the system of due process of law, democracy is the procedure to achieve the premise, the rule of law is the mechanism to protect, and human rights is the pursuit and purpose of due process of law. Maritime law enforcement refers to the activities of the national marine administrative organs, organisations authorised by laws and regulations or entrusted by the administrative organs to carry out administrative management in accordance with the relevant laws and regulations in accordance with the legal procedures. Maritime law enforcement is a key part of the comprehensive management of the sea, and plays a positive role in complying with and enforcing the relevant laws and regulations of the sea [1]. Maritime law enforcement is the maritime law enforcement forces in strict accordance with its legal functions and authorisation, in specific sea and airspace to protect the rights and interests of the sea legal action, to complete the important tasks of the state. Maritime law enforcement can be divided into maritime security, maritime administrative law enforcement and handling maritime criminal cases at three levels [2]. Maritime administrative law enforcement refers to a specialised activity within China's maritime jurisdiction, in which the subject of maritime administrative law enforcement strictly follows the relevant laws and regulations and complies with the relevant maritime law enforcement procedures to safeguard the rights and interests of the sea and protect the ecology. Marine administrative law enforcement is one of the main responsibilities of the China Coast Guard Bureau, but also an important means of China's marine administration [3].

3. The Problems of Maritime Law Enforcement Due Process

In the process of building the rule of law, procedural lawfulness plays an increasingly important role, and the independent value of the procedure is also recognised, but there are two value

conflicts behind the due process [4]. The accurate application of the principle of administrative due process in administrative trials needs to be examined from various aspects of theory and practice. China's maritime law enforcement in the rapid development, a strong impetus to the construction of China's marine discipline and maritime law enforcement efficiency greatly improved. But in reality, maritime law enforcement there are some problems as follows.

3.1. Institutional Setup is not Standardised, and The Strength of Maritime Law Enforcement is Low

The ocean, as an important natural resource, has mobility and wholeness. With the continuous development of the economy, the breadth of the use of the sea is also increasing, the development and use of the sea area to the sea law enforcement has brought some problems. At the same time one-dimensional use of the sea is difficult to meet the development of society, the use of the sea in the three-dimensional development. The three-dimensional stratified use of sea area can not only greatly improve the efficiency of space use, but also can alleviate the problem of resource use, which also brings challenges to the maritime law enforcement procedures. The reform of the maritime law enforcement system, while conforming to the general direction of the comprehensive administrative law enforcement reform, also meets the requirements of maritime administrative law enforcement [5]. The irregularities in the establishment of maritime institutions have led to a lower level of maritime law enforcement. Maritime law enforcement internal institutions set up to lead to the supervision system can not play its maximum value, supervision system internal institutions belong to the same department, for example, is responsible for the management of maritime traffic law enforcement agencies set up in the traffic department, this set up for the role of the supervision mechanism has a negative impact, but also on the other departments of the authority to set up the role of obstacles. China's maritime law enforcement responsibility system in the vertical dimension and horizontal dimension are highly heterogeneous [6]. Irregularities in the institutional settings will inhibit the development of the maritime economy while reducing the strength of maritime law enforcement. The confusion of authority will lead to the generation of blank phenomenon in law enforcement, so that a large number of law enforcement resources are wasted, and all kinds of administrative licensing information can not be obtained in time, which increases the burden for law enforcement [7].

3.2. The Diversification of the Main Body of Legislation, the Separation of Law Enforcement and Management

No law is enough, the social life of the legal system is not enough, but also the need for the implementation of the legal system, the implementation of the legal system and the application of the legal system as a whole, only the real acceptance of the system behind the jurisprudence of the connotation of the legal system can be truly in the life of the community to play its value. Law enforcement is the subject of legal authority, in strict accordance with the provisions of the law, the performance of their own powers and functions, such as on-site inspection, coercion, etc., in administrative theory, including the drafting of the law, including the subject of legislation. Systematisation and systematisation is an ideal state, which helps to go beyond to try new legislative activities, but in reality there are problems and difficulties to achieve. The maritime law enforcement system is a separation of multiple fields, and it is difficult to form a unity of value between multiple fields and between fields and maritime law enforcement, which is a difficult problem that needs to be solved in the development of the maritime law enforcement political and procedural system. The plurality of legislative subjects as well as enforcement subjects makes it possible in reality to have two or even more enforcement subjects for a certain act. Actors of a sea behaviour is easy to be more than one subject of law enforcement investigation and supervision, the waste of resources is not conducive to production and operation, can not achieve the purpose of protecting the rights of citizens, but

also on the credibility of law enforcement has a negative impact. Therefore, the construction of a strong marine need to be combined with China's national conditions, and the development of China to adapt, take a scientific and effective method, so that the development of a good policy can get the corresponding system construction.

3.3. The Passivity of Judicial Power Intervention, Limited to the Formal Review Expressly Provided for in the Law

China's Criminal Procedure Law provides for the investigation system related to the process of maritime law enforcement, which is limited to the formal review expressly provided for in the law, restricting the application of due process. Statutory procedures in the society's general concept is understood as the meaning of the statutory law perspective, the statutory law will often not have a detailed and specific procedural provisions, which leads to the judicial practice is rarely used. China's 'emphasis on the entity, light procedure', in the absence of detailed procedures specified in the law, in the process of judicial practice, it is difficult to use the legal procedures in the process of reviewing the administrative act, except in the case of serious violations of law by the administrative organ [8]. China's marine police force law enforcement started late, the marine environment is more complex and diversified, resulting in the lack of maritime law enforcement capacity, in which there are fewer law enforcement cadres, the marine police force, engaged in cadres, coupled with the law enforcement subject of the law enforcement concept of low, and did not correctly treat law enforcement. The special nature of the marine police force has led to the loss of many mature law enforcement personnel, resulting in a lack of expertise. The lag in the involvement of public security organs, the virtual absence of supervisory powers in the procuratorate, and the vague criteria for defining environmental offences and environmental crimes at sea

4. Improvement of maritime law enforcement due process

4.1. Integration of Maritime Law Enforcement Team, improve Law enforcement

Maritime law enforcement agencies set up irregularities, resulting in maritime law enforcement is low, therefore should be constructed to suit China's national conditions of the marine administrative law enforcement mechanism, strengthen the management of the oceans and seas, the integration of law enforcement team, learn from the successful experience of other countries, the establishment of a high-level, systematic and close to the marine management agency to supervise and coordinate the law enforcement activities of each department, so that the division of labour of each department is clear and specific to form a good cooperation mechanism. Each department's law-enforcement activities, so that the division of labour of each department is clear and specific, and a good cooperation mechanism is formed. Actively incorporate the convergence of criminal justice and maritime administrative law into the construction plan, and realise the interconnection of law enforcement and judicial information [9]. At the same time, it deepens the understanding of the State Maritime Commissioners, so that law enforcement can be substantially improved. Cultivate the big data capacity of administrative agencies, strengthen the protection of personal information in data sharing, fully protect the privacy of individuals when it comes to personal related data and information use authorisation, and regulate the behaviour of comprehensive marine law enforcement agencies. At the same time, the efficiency of maritime law enforcement can be further improved through the establishment of an information exchange and communication system [10].

4.2. Clear Legislation Subject and Division of Powers

In recent years, the three-dimensional sea strategy to strengthen the implementation of the utilisation of the sea has increased significantly, such as the construction of cross-sea bridges,

cross-sea bridges and sea water in the aquaculture coexistence, cross-sea bridges in the process of construction, the construction of piers during the construction of the bridge will involve the water surface, the water body, the seabed, and other parts of the bridge, at the same time, the construction team, the ship, and the use of a variety of equipment will be a high-frequency across the The construction team, vessels, and various equipment will traverse the water surface and the seabed space at high frequency, which will also lead to the impact on fishery activities such as mariculture. Noise from construction equipment will also affect nearby households and businesses for a long period of time, disrupting normal production and business activities. The ocean in the continuous development at the same time also faces many problems, coupled with the mobility of the ocean itself, so it is particularly important to clarify the division of the main body, should be analysed from the point of view of the link between the maritime law enforcement casework, can not just focus on the surface phenomenon of the problem, but to focus on in-depth thinking about the root causes of the problem [11].

Marine police agencies are important maritime law enforcement agencies, but also to achieve the main force of the maritime power, but if only rely on its power is difficult to achieve the goal of defending China's maritime security and development interests [12]. It should actively adopt the principle of central agency-led, local participation in marine management to enhance the social and economic level and development for the purpose of the division of rights, to reduce the negative interference in production and business activities, so that the maritime law enforcement powers and responsibilities are centralised and clear, and the integration of information is highly efficient.

4.3. Improve the Basis of Maritime Criminal law Enforcement of the Marine Police Force

Further establish the maritime criminal law enforcement system, clarify the authority and responsibility of each department, standardise procedures, provide safeguards for the law enforcement of the marine police force, and clearly stipulate the responsibilities and authorities in the form of laws and regulations, and cooperate and cooperate with each other. Optimise the structure of the law enforcement team, improve the law enforcement capability of the marine police, advocate the backbone with more mature experience to play a leading role, speed up the introduction of talents, and improve the comprehensive quality and capability of maritime law enforcement. In terms of evidence collection, the difficulty of evidence collection at sea seriously restricts the conduct of investigations at sea, so the marine police force should actively explore the acquisition of intelligence news, and equip with reconnaissance ships if necessary, so as to accurately grasp the law of the conduct of unlawful and criminal activities. The central and local, our country and international closely linked together, with a development perspective to form a more complete legal mechanism for the protection of the sea.

5. Conclusion

The principle of due process originated in the West and developed in the West, the application of the principle of due process in China has promoted the development of administrative law and the improvement of the maritime law enforcement system in China. With the development of economic globalisation, the principle of due process plays an increasingly important role, and the regulation of maritime law enforcement due process is of great significance in realising the convergence of maritime law enforcement and trajectory, and realising the goal of building a strong maritime nation.

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