

The Evidence Status of Administrative Recognition Opinions in Lawsuit

Ge Li

Law School

Sichuan University

Chengdu, China

School of Law

Northwest Minzu University

Lanzhou, China 730030

Abstract—The administrative recognition opinion is the recognition and qualitative opinion on certain issues of the judicial system or the administrative organ applied to by the party, and it is increasingly appearing in lawsuits. For how to treat it, how to provide proof for it, how to cross-examine it, how to examine it, there is no law to go by in practical work, and most of the time it is treated as a documentary evidence, which has caused certain problems. From the perspective of the characteristics and review of administrative recognition opinions, it is not appropriate to classify them into documentary evidence. Combined with the existing laws, this paper advocates positioning them as expert opinions.

Keywords—*administrative recognition opinion; adequate cross-examination; review; expert opinion; evidence status*

I. INTRODUCTION

Some facts and materials in lawsuit practice are beyond the cognitive range of the judges and the parties, and therefore some administrative departments are required to issue certain recognition opinions based on relevant standards and rules, such as the recognition of secret classification of some unidentified documents in secret-involved cases and the proportion of responsibility in security accident, etc., are referred to as the administrative recognition opinions in this paper. Administrative recognition opinions are common in some liability accident cases, and are generally treated with reference to documentary evidence¹, and a written review is conducted on them in court trial. In terms of the form, they do meet the characteristics of documentary evidence: they prove the facts of the case based on their own contents recorded. However, I can't help but think about a question: Is it reasonable to treat them as documentary evidence? Are their proof providing and cross-examination the same as ordinary documentary evidence?

If treated as documentary evidence, according to Article 69 of the Interpretation of the Supreme People's Court on the

¹ After inquiry, Prof. Long Zongzhi believes that administrative recognition opinions are defined as documentary evidence with professional identification attributes. When asking some judges in intermediate courts and grass-roots courts, they generally treat administrative recognition opinions as documentary evidence.

Application of the “Criminal Procedure Law of the People's Republic of China”, the review of documentary evidence mainly starts with whether it is the original document, the custody process, and the relevance to the facts of the case. If this is applied to administrative recognition opinions, it means that the relevant production personnel are not required to be presented at the time of review or to explain the technical standards and procedural rules involved in producing the opinions. Administrative recognition opinions are endorsed by state power, and it is generally difficult for the other party to raise objections. Unless there are obvious logical problems, otherwise the judges are used to accepting without question; different from expert opinions, generally the analysis process for the problem will not be specified, and only the conclusion will be given simply, so it is difficult for dissidents to “find a problem”. All the above drawbacks are difficult to avoid in practice². From the perspective of proof, it means that the use of the review form of documentary evidence is not conducive to the comprehensive review and cross-examination of the administrative recognition opinions. So why not classify them into other types of evidence and develop more strict procedure and rules for their review and cross-examination?

First of all, this paper starts from the perspectives of the characteristics of administrative recognition opinions and the full cross-examination, and analyzes the reasons why it is not suitable to classify them as documentary evidence.

II. THE CHARACTERISTICS OF ADMINISTRATIVE RECOGNITION OPINIONS DETERMINE THAT IT IS NOT SUITABLE TO CLASSIFY THEM AS DOCUMENTARY EVIDENCE

Administrative recognition opinions have the characteristics of responding, professional and administrative monopoly in the process of their production and use.

² Wang Chongqing. Administrative recognition should not be used as a prepositive procedure in administrative criminals recognition [J]. Chinese Criminal Science, 2011, Issue 6, 17-21: Directly taking the administrative recognition of administrative organs as a basis for criminal identification actually causes an objective phenomenon in which the rights of conviction are dominated by administrative organs.

First of all, from the perspective of the production process, when some problems are beyond the cognitive range of the judges and the parties, they must seek the support of the administrative department and require it to issue certain opinions. These problems are the premise of the administrative recognition opinions. Note that the problems here cannot be solved by judicial expertise, but are associated with the function of the administrative department. This premise of lawsuit determines an important characteristic of administrative recognition opinions - they are produced for the purpose of resolving disputes and lawsuit, which is called responding in this paper. After that, the court or a party requests the relevant administrative department to issue administrative recognition opinions, the administrative department issues written opinions based on the industry standard or the administrative experience of the administrative personnel and presents them to the court or the party. This is the production process of administrative recognition opinions. The industry standards on which it is based are generally strict professional standards recognized by the international community or the State, and professionalism is embodied in the production process. Furthermore, administrative recognition opinions are presented to the parties by the judge in the court to accept the cross-examination of the parties, and finally the judge judges their effectiveness. This is the application process of administrative recognition opinions. It is necessary to recognize that compared with witness testimony, etc. that require examining the status and subjective attitude of the subject of testimony, administrative recognition opinions are rarely questioned because of the special status of the subject and professionalism, and the judges and the parties generally measure only by their probative force. This process embodies the administrative monopoly.

The above characteristics determine that they are very different from ordinary documentary evidences.

From the perspective of responding, they can be distinguished from many types of documentary evidence. For example, from comparison between administrative recognition opinions and the official documentary evidences produced by the state organs and social organizations stated in the Several Provisions of the Supreme People's Court on Evidence of Civil Proceedings, it can be known that the latter is formed before the lawsuit based on powers, while the former is formed in the process of lawsuit or lawsuit preparation on request; the latter is fixed in types and formats, while the former often uses the opinions, explanations, identification and appraisal on certain questions as the content, and the administrative recognition opinions are not the administrative actions or work contents of the administrative units, but an explanation and judgment for relevant problems that can be understood by the public.

Most documentary evidences are not professional, which brings a common problem in forensic scientific evidence-difficulty in information adoption and admission: In the court, the contents of ordinary documentary evidences can be reviewed through common sense, however, written review of administrative recognition opinions can only obtain their conclusions, while the scientific principles and argumentation process on which they are based are unavailable, or they can

be seen but cannot be understood, and it is difficult for the judges and parties to understand them.

The administrative monopoly is to put the administrative recognition opinions into a situation that is very different from ordinary documentary evidences. It means that the administrative recognition opinions hide the risk of administrative intervention in judicial system to a certain extent. After all, compared with some pre-lawsuit evidences, that is, the evidences that existed before the lawsuit, the birth environment is more related to the judicial judgment.

The three above-mentioned characteristics that are different from ordinary documentary evidences determine that it is unreasonable to classify administrative recognition opinion as documentary certificates in lawsuit.

III. FROM THE PERSPECTIVE OF WHETHER THE ADMINISTRATIVE RECOGNITION OPINIONS CAN BE FULLY CROSS-EXAMINED OR REVIEWED, IT IS NOT SUITABLE TO INCLUDE IT IN THE SCOPE OF DOCUMENTARY EVIDENCES

Full cross-examination and review of evidence require the two parties and the judges in the trial to be able to have a comprehensive and sufficient argument on the source of the evidence, the legal identity of the evidence producer, the basis for production, the process of production, the degree of association between the evidence and the facts to be proved, and whether it conflicts with other evidences. Full cross-examination and review of the evidence is an inevitable requirement of the modern rule of law.

Under the existing lawsuit system of our country, the cross-examination and review of administrative recognition opinions should be said to be insufficient mainly reflected in the following three aspects:

First of all, it is difficult to review whether the production subject is legal. The division of ownership of some problems by administrative organs in our country is not very clear, and some jurisdictions are quite confusing, to give an extreme example — "to prove that your mother is your mother"³, "to prove that you are yourself"⁴, and "to prove that you are still alive"⁵, in order to obtain such proof, applicants are often kicked around like a ball by the civil administration, the household registration management department and the medical system. At the same time, the relationship between the upper and lower levels is also easily confusing. For whether the lower authorities have the right to give administrative recognition opinions administrative actions that can only be made by the higher authorities, whether the higher authorities can explain the relevant administrative actions of the lower authorities, these are often no law to go by. Such situations in which the administration and the judiciary are difficult to

³ This prime minister has personality, Li Keqiang angrily rebukes "to prove that your mother is your mother" [EB/OL].[2015-05-09]<http://news.hexun.com/2015-05-09/175668042.html>.]

⁴ To prove that "you are yourself" reflects the lack of the rule of law and common sense [EB/OL].[2015-05-27]<http://news.163.com/15/0527/00/AQJ6ETOJ00014AEE.html>.]

⁵ More ridiculous proof than "to prove your mom is your mother" [EB/OL].[2015-05-11]<http://news.sohu.com/20150511/n412797479.shtml>.]

connect with each other have led to a phenomenon in which a document written by a department becomes an "imperial edict" with a seal, and the skeptics are unable to deal with and have nowhere to work.

Secondly, it is difficult to review the basis and process of production. The relevant industry standards on which the administrative recognition opinions are based are often not uniform, and they are diversified, even inconsistent in different provinces and cities, and difficulties are and it is inevitable in cross-provincial and cross-municipal lawsuits. As for the production process, as mentioned above, the administrative recognition opinions often simple, providing only the conclusion but no process, and the administrative organs do not send personnel to the court for explanation, so it is inevitable that the review of the production process becomes empty talk.

Finally, there is a potential "big" problem — which problems can be assigned to the administrative organs for recognition? Who holds the decision-making power? Under the system of authoritarian lawsuit in our country, the habitual practice is that a party applies for trial court, and can the other party effectively challenge it or file a reconsideration or appeal? This is also a blank part of the law.

On the one hand, the above problems are forced by the big environment and the overall situation; on the other hand, it also shows that the method of classifying the administrative recognition opinions as documentary evidences and using review of documentary evidences are not conducive to full review.

Under the current evidence system in China, it is necessary to find a suitable type of evidence and a corresponding form of evidence review, which can meet the unique characteristics of administrative recognition opinions, guarantee full review, and be logically self-consistent and realize the evidence function.

IV. FEASIBILITY OF INCLUDING ADMINISTRATIVE RECOGNITION OPINIONS INTO EXPERT OPINIONS

According to the relevant evidence clauses in China's legal system, referring to the relevant lawyers' experience in cross-examination, I believe that it is more reasonable to include administrative recognition opinions in expert opinions. It may be that the first reaction of some people that only judicial expertise institutions have the right to give expert opinions, and it is not appropriate to include the administrative recognition opinions in its scope, but we should pay attention to distinguishing the concepts of "expertise" and "judicial expertise"⁶.

⁶ Xue Xiaowei. A new type of judicial expertise --administrative recognition opinion [j]. *Journal of Taiyuan Normal University (Social Science Edition)*, 2013, Issue 5, 40-45: Some scholars deny the recognition of traffic accidents as expert opinions, in the grounds of their denial, we find a mistake that they equate judicial expertise with expert opinions, and use the relevant provisions of judicial expertise to measure expert opinions. Of course, in 2015, the *Classification Regulations of Judicial Expertise Practice (Trial)* included traffic accidents in the scope of judicial expertise.

The expertise in mainstream views is generally understood in conjunction with China's judicial expertise system⁷, Article 2 of the General Principles of Judicial Expertise Procedures, which was implemented on May 1, 2016, stipulates that "judicial expertise refers to the activities of identifying and judging professional problems involved in lawsuits by experts with scientific techniques or specialized knowledge, and providing expert opinions". The judicial expertise system in China is a system empowered by the State, and the expertise power us given to the expertise institution by the national judiciary. The expert opinions refer to the opinions made by the expertise institution according to the industry standard and on the basis of the relevant materials of the case and the specialized knowledge and experience.

However, in China's procedural law and related judicial interpretations, the concept of judicial expertise in the sense of China's judicial expertise system has never been established. For example, Article 114 of the Criminal Procedure Law stipulates that "in order to ascertain the circumstances of the case, when it is necessary to solve certain special problems in the case, it should assign and hire someone with specialized knowledge to conduct the expertise", Article 145 stipulates that "after the expert has made the expertise, he/she shall write an expert opinion and sign it. If the expert deliberately makes a false expertise, he/ she shall bear the legal responsibility", Article 76 of the Civil Procedure Law stipulates that "the parties may apply for expertise for the professional problems of the facts to the people's court", etc., the expertise stipulated here is expertise in a broad sense, which does not limit the subject, for example, the "person with specialized knowledge" must be the expert of the judicial expertise institution, but most of us are used to the judicial expertise system in China and automatically treats the two as equivalent.

All of the above provide a good legal support for including the administrative recognition opinions into expert opinions.

The formation process of expert opinions also reflects the characteristics of responding and professional: the expert opinions are made according to the entrustment of the parties or the court, and the technical standards and norms on which they are based, the production process, and the quality requirements for the experts all reflect professionalism. Coincidentally, there are also drawbacks of expertise replacing judging in the practice, which is similar to the administrative monopoly of administrative recognition opinions. In terms of the characteristics, it is highly consistent to administrative recognition opinions.

In response to the review of the expert opinions, both the New Criminal Procedure Law in 2012 and New Civil Procedure Law in 2013 have increased the system of expert's court appearance. In terms of the review of the expert opinions themselves, the Interpretation of the Supreme People's Court

⁷ Zhao Xinquan. Questioning the Evidence Attributes of Traffic Accident Recognition [J]. *Legal Forum*, 2009, Issue 6 40-45, Guan Manquan. On the Evidence attribute of Traffic Accident Recognition [j]. *Journal of Chinese People's Public Security University (Social Science Edition)*, 2008, Issue 6 75-79, Rong Baiquan. Analysis of the Evidence Status of the Traffic Accident Recognition [J]. *Academic Exchange*, 2006, Issue 49-52, all hold this view.

on the Application of the Criminal Procedure Law of the People's Republic of China is more comprehensive than other legal norms, including reviewing the qualifications of the expertise subject, whether the expertise material is legal, whether the form of the expert is complete, the expertise procedure, the expertise process method, whether there is any correlation with the facts to be proved, and whether there is a contradiction with the relevant photo and records., etc. In addition, the expert supporter system of Article 192 in the Criminal Procedure Law gives the parties the right to cross-examine the expert opinions.

Applying the review mode of expert opinions to the administrative recognition opinions can relatively effectively solve the qualification of the production subject, the production process, and the cross-examination and the review of basis.

V. THE IMPACT AND PROBLEMS BROUGHT BY INCLUDING THE ADMINISTRATIVE RECOGNITION OPINIONS INTO EXPERT OPINIONS

To treat administrative recognition opinions as expert opinions, firstly it requires the administrative organs to actively cooperate with the lawsuit work, establish relevant administrative recognition systems and supporting legal norms; at the same time, it requires sufficient legal awareness from top to bottom. This will inevitably increase the operating costs of administrative organs, and will also bring certain legal risks. However, it should also be recognized that the positive public opinions brought about are greater than the risks and costs brought about by the administrative lawsuit filed by the parties.

However, with the traditional Chinese bureaucratic thinking, it is difficult to let the administrative organs serve the judicial activities. On July 7, 2016, the General Office of the State Council promulgated the Opinions of the General Office of the State Council on Strengthening and Improving Administrative Response, and pointed out that "to implement the requirements by the Decision of the Central Committee of the Communist Party of China on Comprehensively Advancing Major Issues in Governing the Country According to Law" on "improving the system of administrative organs appearing in the court to respond, supporting the court to accept cases, respecting and enforcing the court's effective judgment", ensure the effective implementation of the administrative lawsuit law, comprehensively promote the administration according to law, and speed up the construction of law-based government", the State Council needs to publicly remind and request the administrative responding work that belongs to the responsibility of the administrative organs and the law has clearly prescribed, from which we can feel the indifference of China's administrative organs to judicial work.

Secondly, for the judicial organs, the full review of the administrative recognition opinions and the appearance of the opinions producers are inevitable requirements to realize the substantiation of trial and guarantee the trial center, and are powerful means to prevent administrative interference in judiciary. In a larger sense, it is an inevitable path that leads the relationship between judicial power and administrative power to a right track.

The problem that needs to be confronted is the change of ideas. The dual pressure from the higher authorities and the parties has caused judicial organs to flinch. The old problem of "administrative intervention in judiciary" and the new problems of "public opinion intervening in judiciary" and "the threat to the personal safety of judges" are common. In practice, on the one hand, the expertise supremacy comes from the superstition of professional technology; on the other hand, it is the means by which the judicial organs shirk their responsibilities. What's more, the administrative recognition opinions themselves are backed by the administrative organs. For judicial organs, the risk of adopting them is smaller than questioning them, and it's also less troublesome.

Finally, for the parties, it is obviously beneficial to protect their rights by including administrative recognition opinions in expert opinions. However, the problem is that it is necessary to improve the level of cross-examination of the administrative recognition opinions in the trial, but it is obviously very difficult when combining with practice, and the main reason is the professionalism of the administrative recognition opinions. Compared with the expert supporting system in expertise opinions, how do the administrative recognition opinions produce "expert assistants"? Do people that are not in-service experts of administrative organs have the qualification or condition to challenge the administrative recognition opinions? This requires further research.

VI. CONCLUSION

With the evidence adjudicating principle being confirmed in Decisions of the CPC Central Committee on Several Major Issues Concerning Comprehensively Advancing the Rule of Law, the issue of evidence law has become more and more important in the context of judicial reform in China. Our evidence law inherited the form from that of the former Soviet Union, which has provided the help for judicial practitioners to grasp the evidence problem in the practice. However, it also has produced a series of problems to some extent, such as the lack of unified standard of evidence forms, the confusion of classifying "new pattern of evidences" and so on. The classification of administrative opinions is only one part of a series of problems, which is necessary to study the relevant legislation and theory of evidence law in our country in the light of the whole judicial system and the relevant legislation and legal research abroad.

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