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Reflection and Improvement of Litigation Relief in China's Administrative Contract Dispute Resolution

LONG Qian[a],*

[a] Law School, China University of Political Science and Law, Beijing, China.
*Corresponding author.

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Abstract

The clauses related to the administrative contracts in the new *Administrative Litigation Law* and the judicial interpretation about the administrative contracts in *Interpretation of Applicability* together constitute the normative basis of the current case hearing of the administrative contracts. However, in the current practice of judicial trials of administrative contracts, the intrinsic defects of the normative basis are gradually becoming more apparent. These defects specifically include the vagueness of the scope of case accepting, the unclarity of the normative application rules, and low operability etc. This article intends to reflect on the above defects. The author argues that it is necessary to define the scope of case accepting of administrative contracts based on positive and negative criteria. Within the subset of administrative litigation - the administrative contracts, discriminating the characteristics of differences disputes and making the disputes applicable to different normative application rules.

Key words: Administrative contract; Scope of case accepting; Normative application; Nature of the dispute

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INTRODUCTION

The new *Administrative Litigation Law* issued in 2014 specifies that the administrative contract cases should be included in the scope of case accepting of administrative litigation. Since then, the debate on the choice of administrative contract litigation came to an end. In compatible with the trial of administrative contract cases, the Supreme Court issued the "Interpretation of Several Issues Concerning the Application of the Administrative Litigation Law of the People's Republic of China"[1] (hereinafter referred to as the *Interpretation of Applicability*,) and made preliminary stipulations on the trial of administrative contract cases, including the definition, categorization, duration of litigation, jurisdiction, application norms and judgement methods of the administrative contracts. However, since the administrative contracts have the characteristics of behaviors of both parties, its method of the trial has unique features. the preliminary stipulations of the *Interpretation of Applicability* cannot suit the trial needs of the administrative contract cases. The logical structure of the text is as follows: first, the contracts signed by the administrative organ includes the administrative contracts and the civil contracts. The administrative contracts are identified through the norm-based analysis of the scope of case accepting: the administrative contracts are incorporated into administrative lawsuits, and the civil contracts are included in civil lawsuits. Secondly, for the part of the administrative contracts which are incorporated into the administrative litigation, it is necessary to identify the different features of different disputes, and different normative application rules suit the different dispute types.

1. DETERMINING THE SCOPE OF CASE ACCEPTING OF THE ADMINISTRATIVE CONTRACT LITIGATION

1.1 The Vagueness of the Normative Basis of the Scope of Case Accepting

[1] Supreme People's Court Interpretation [2015] No. 9.

Article 12 (1) (11)[2] of the new *Administrative Litigation Law* is the primary legal basis for explicitly including the administrative contracts in the scope of administrative litigation. Article 11[3] of the *Interpretation of Applicability* is the supporting clause of the above article. Article 11 further explained and enumerated the definition and the scope of administrative contracts. The two articles together constitute the normative basis for determining the scope of the administrative contracts. In terms of the form, since the administrative contracts are incorporated into the administrative lawsuit due to the stipulations of the actual law, the relevant administrative contract cases should be tried through administrative litigation; in terms of the contents, specifying the concept of administrative contracts and defining administrative contracts in a substantive way would satisfy not only the condition that the contracts are administrative contracts, but explicitly enumerate the usual form of expression in the administrative contracts, including the government franchise contracts and the compensation contracts on land acquisition and expropriation. This method of "limited enumeration + connotation determination" indeed contains a lot of ambiguity: first, there is a cognitive difference in whether the contracts under other names are administrative contracts covered by the scope of case accepting, and the boundary between what administrative contracts signed by the administrative organ can be included in administrative litigation and what cannot is not clear. Second, there may be different understandings about the connotation of the administrative contracts. Third, whether the "action" limitation of the scope of case accepting clause is a restriction on including administrative contracts in administrative litigation is disputable. The vague understanding of the scope of administrative contracts exists in many other administrative contract cases.

[2] Article 12, Clause 1 (11) of the *Administrative Litigation Law of the People's Republic of China (2017 Amendment)*: "A complaint claiming that an administrative agency has failed to perform according to the law or as agreed upon, or illegally modified or rescinded, an agreement, such as a government concession agreement or a land and building expropriation compensation agreement;"

[3] Article 11 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Administrative Litigation Law of the People's Republic of China*: "The agreement between the administrative organ and the citizens, legal persons or other organizations stipulated based on negotiation over the contents of the rights and obligations of the administrative law in order to achieve the public interest or administrative objectives is recognized as administrative agreements defined in the first clause of Article 12 of the *Administrative Litigation Law*. If a citizen, legal person or other organization files an administrative lawsuit against the following administrative agreement, the People's Court shall accept the case according to law: (1) the government franchise agreement; (2) the land acquisition and expropriation compensation agreement; c) other administrative agreements."

1.2 "Action-limited" Conditions in the Scope of Case Accepting

The "limitation of behavior" of the administrative contracts has two characteristics: first, the administrative organ must engage in a certain action; second, the type of action includes failing to perform according to law, failing to perform according to the contract, or changing or rescinding the act illegally. No other actions are covered. This stipulation brings about the following problems: if the administrative organ fails to perform above-mentioned actions due to the problematic nature of the contracts, whether the counterpart of the administrative organ is permitted to file a lawsuit against the administrative contract cannot be ascertained; In the series of procedures for the establishment, entry into force, performance, and rescission of an administrative agreement, the administrative agency may not only perform the above four actions, but may possibly make other actions. This expression of "action-limitation" will, in fact, lead to the narrowing of the scope of case accepting in judicial practice, which is not conducive to protecting the rights of the counterparts of the administrative organ.

1.2.1 The Impact on the Scope of Case Accepting

The "action-limited" condition causes many local courts in judicial practice to understand it as a limitation on the scope of the administrative contract case accepting in administrative litigation. The counterpart of the administrative organ can only file an administrative lawsuit against the administrative contract for the four actions of the administrative organ. In the actual practice of judicial trials, the courts often negate the request by the counterpart of the administrative organ to nullify the contracts, rescind the contracts and examine the procedure in the signing of the contracts and review the legality of the applicable law, thus the courts negate the litigation request of the counterparts of the administrative organ based on the scope of case accepting. This situation has caused a large number of administrative contract disputes to lose the opportunity to obtain relief through administrative litigation.

1.2.2 The Correct Understanding of "Action-Limited" Conditions

Expanding the scope of administrative litigation, protecting the litigant rights of the participating parties, and preventing disputes that should be resolved through litigation to enter the channel of letters and visits all have long been the starting point and the foothold of the legislative work of administrative litigation.[4] The understanding of the scope of case accepting in administrative litigation should go back to the legislative

[4] Administrative Law Office of the Legal Affairs Working Committee of the Standing Committee of the National People's Congress.(2018).*The complete collection on the legislative background and viewpoints of the administrative litigation law (p.5),* Law Press.

intent and the interpretation should be expanded. It can be seen from the embodied spirit in the catch-all clause of the scope of case accepting in administrative litigation that, in principle, unless there are other stipulations in aw, the counterpart of the administrative organ can file an administrative lawsuit according to the law if their personal rights and property rights are violated by administrative actions.[5] Under the background of administrative contracts being included in the scope of case accepting in administrative litigation, disputes concerning administrative contracts may possibly infringe on the personal rights and property rights of the counterparts of the administrative organ, and therefore the administrative contracts should be included in the scope of case accepting in administrative litigation. This type of dispute includes but not limited to unilateral acts by the administrative organ targeting administrative contracts, as well as disputes over traditional contract law.[6] Expanding the interpretation of this clause would at least bring two litigation benefits: first, it avoids relevant administrative disputes from entering civil litigation channels, resulting in chaos in dispute resolution methods based on the same contract entering civil litigation and administrative litigation respectively; second, it is conducive to the comprehensiveness of the administrative contract dispute litigation relief protection, therefore avoids the situation when some administrative disputes are omitted in the administrative litigation relief.

1.3 Determining the Double Standards of the Scope

1.3.1 Positive Standards

Positive standards are standards that meet the requirements of the concept of administrative contracts: if the contract meets the elements of the concept of administrative contracts, then the contract should be recognized as an administrative contract. According to the definition of the administrative contract in Article 11 of the original *Interpretation of Applicability*, we conclude that an administrative contract has these elements: first, the actor element - one party of the administrative contract is the administrative organ; second, the content element - it contains the rights and obligations as stipulated in administrative law; third, the meaning element - the contract is enacted after negotiating with the counterpart of the administrative organ, and the content of the contract reflects the autonomy of meaning; fourth, the responsibility element - the act of performing the statutory duties within the scope of the statutory duties; fifth, the purpose element - the contract is stipulated in order to realize the public interest or administrative management aims.[7] Among all these elements, the second and the fourth elements are the decisive factors for determining an administrative contract, and the first, third and fifth items are auxiliary elements.

1.3.2 Negative Standards

Negative standards are clearly excluded standards, that is, if the contract is a civil contract, it is excluded from the scope of the administrative agreement. First, negative standards are standards that are independent of actions in administrative contracts. The administrative organ and the counterpart of the administrative organ have signed an administrative contract, then they will engage in mutual actions through the intermediary role of the contract. If one action is not related to an administrative contract, but independent of the administrative contract, then the action is an independently existing action, and the disputes emerged around the action cannot be included in the realm of administrative contract disputes. Second, negative standards are also standards that are not within the scope of statutory duties. The administrative organ has multiple roles in their daily activities. In addition to performing statutory duties for official duties, they can also engage in civil activities as ordinary civil subjects. The subject matter and the content of the administrative contract are the rights and obligations of the administrative law and therefore cannot include the contracts signed by the administrative organ to exercise civil rights.

2. THE NORMATIVE APPLICATION RULES IN JUDICIAL INTERPRETATION

2.1 The Conflicts in Normative Application

As administrative contract cases, the cases have both an "administrative" aspect and the "contractual" aspect of public-private agreements.[8] This dual characteristic cause the judges to face the problem of whether to choose administrative legal norms or civil legal norms when hearing administrative contract cases. Article 14 of the

[5] Jiang, B. X., & Liang, F. Y. (2016). *Theory and practice of administrative litigation law* (p.212) (3rd ed. Part. 1). Law Press.

[6] Such disputes include: stipulation negligence at the time of the stipulation of the agreement, whether the agreement enters into force or not, validity of the agreement, revocation and termination of the administrative agreement, request to continue to perform according to the administrative agreement, take corresponding remedial measures, assume the responsibility for compensation and the disputes over the supervisory, directory, and interpretory acts of the administrative organ.

[7] Jiang, B. X., & Liang, F. Y. (2016). *Theory and practice of administrative litigation law* (pp.337-343) (3rd ed. Part. 1). Law Press.

[8] Liang, F. Y. (2017). Problems in the application of contract law in administrative agreement cases. *China Law Review*, (01)

Interpretation of Applicability[9] stipulates that a priority should be placed on administrative legal norms in the trial of administrative contract cases, and the civil legal norms can be applied if not violating the mandatory provisions of administrative law and administrative litigation law. The concept conveyed by this regulation is that administrative legal norms are prioritized in the trial of administrative contract cases, and civil legal norms are only applicable when not conflicting with the administrative legal norms. However, Article 12[10] on the litigation time limitation[11] and Article 16[12] on the payment of litigation fees seem to fundamentally contradict with Article 14. These two articles categorize the actions of the administrative organ: civil legal norms about the stipulation of litigation time restriction and the standards of civil case fees should be applied to administrative organs not performing according to law or failing to perform according to the contract; administrative legal norms about the stipulation of litigation time restriction and the standards of civil case fees should be applied to administrative organs that unilaterally change or rescind contracts. The time limit for action in the civil legal norms and the time limit for prosecution in the administrative legal norms are two fundamentally different systems. The stipulations on the limitation of action are certainly inconsistent with the provisions on the time limit for prosecution. According to Article 14 of the *Interpretation of Applicability*, the litigation time-limitation system has no use in the trial of administrative contract cases. At the same time, it can be seen in the jurisdiction clause of Article 13[13] of the original *Interpretation of Applicability*, there is no distinction between the two categorizations in the provisions of the jurisdictional court that uniformly apply the administrative law.

2.2 The Limitations of the "Two-Categorization" Method

The logic behind the "two-categorization" method of the administrative organ's actions in Articles 12 and 16 of the *Interpretation of Applicability* is viewing the act of non-performance by the administrative organ and the failure to perform the administrative contract according to law as a civil act, and at the same time viewing the unilaterally changing or rescinding the administrative contracts as administrative act. Therefore, different norms are applied according to the different natures of the actions. According to the aforementioned norms, the principle that "different norms should be applied to acts of different natures" should be the basic principle for the trial of administrative contracts. However, does this "two-categorization" method have the required scientific nature? The author believes that this is still debatable. The "two-categorization" method is to determine the application of legal norms in accordance with the behavior of the administrative organs, rather than the content of the actions. Failure to perform, change, or rescind are different forms of actions made by the administrative organs. Different forms of actions may contain action contents of the same nature. To be more specific: non-performance - including failure to perform in accordance with administrative laws and regulations, non-compliance with civil laws and regulations, and failure to perform in accordance with the contracts; changes, including the change of contract contents or objects - such as changes in the types, quantities, quality, and specifications of the subject matter, performance methods, performance time limitation, performance location, the change in the means of payments, etc.;[14] rescission, including rescission in accordance with civil laws and regulations and rescind in accordance with administrative laws and regulations. The rescission includes rescinding in accordance with civil law regulations and administrative law regulations. As can be seen from these definitions, each of the above types of actions may include both administrative law

[9] Article 14 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Administrative Litigation Law of the People's Republic of China*: "When the People's Courts examine whether the administrative organ performs according to law, performs the agreement in accordance with the agreement, or unilaterally changes or rescinds the agreement, civil legal norms can be applied as administrative legal norms if doing so would not violate the mandatory provisions of the *Administrative Law* and the *Administrative Litigation Law*."

[10] Article 12 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Administrative Litigation Law of the People's Republic of China*: "Citizens, legal persons or other organizations that fail lawsuits against administrative organs for failing to perform according to law or failing to perform in accordance with the agreement shall refer to the provisions of the civil legal norms on the time limitation of litigation; for litigation against the unilateral change and rescission of the agreement by the administrative organ, the regulations on the time limitation of litigation included in the *Administrative Litigation Law* and in judicial interpretation are applicable."

[11] The time limit for litigation referred to in this article includes the time limit for prosecution in the administrative legal norms and the time limit for action in civil legal norms.

[12] Article 16 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Administrative Litigation Law of the People's Republic of China*: "For litigation against the administrative organs that fail to perform according to law or fail to perform in accordance with the agreement, the litigation fee shall be subject to the standard of payment in civil cases; for litigation against the administrative organs that unilaterally change or rescind the agreement, the litigation costs shall be subject to the administrative case standard."

[13] Article 13 of *Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Administrative Litigation Law of the People's Republic of China*: "For litigations targeting administrative agreements, the provisions of the *Administrative Litigation Law* and its judicial interpretation shall be applied to determine the competent court."

[14] Jiang, P. (Ed.). (2007). *Civil Law* (p.665). China University of Political Science and Law Press.

disputes and civil law disputes. If the the administrative organ fails to perform, it means that the administrative organ did not make defective performance in full accordance with the contract, or possibly the mandatory provisions of the administrative legal forms are transplanted into the contract (intrinsically they are not agreed terms), or the administrative organ does not deal with the administrative procedure needed by their counterparts in a timely manner, or covertly change the contents of the contracts based on non-performance according to the contracts. Besides, the rescission by the administrative organ may be based on the rescission condition agreed upon in the contracts.,The agreement may be rescinded by exercising the right of rescission when the disclaimer is fulfilled, or the agreement may be rescinded by exercising the administrative superiority right. Therefore, making a distinction in apply different norms according to different nature of the norms is unreasonable.

2.3 The Normativity of Normative Application Rules

There is a natural intimity between civil law regulations and administrative litigation. As early as the 1980s before the promulgation of the *Administrative Litigation Law*, the cases of "people suiting officials" in China were conducted through civil litigation. After the adoption of the *Administrative Litigation Law* in 1989, the solution to some of the technical problems not covered by the *Administrative Litigation Law* in the proceedings is still that "the aspects not covered by the *Administrative Litigation Law* are subjects to the *Civil Litigation Law.*" The spirit embodied in this approach is that civil procedural laws have a complementary role in the process of administrative litigation to fill the normative gaps presented by the lack of norms in the *Administrative Litigation Law*. As we all know, the historical basis of civil litigation is relatively more well-founded than administrative litigation, and its legislative technology has also developed into a relative more mature form than administrative litigation. The civil litigation system can play the role of auxiliary role conducive to the development of the new administrative litigation system.

With the emergence of administrative contracts, using more and more applicable civil legal norms is necessary to resolve administrative contract disputes through administrative litigation. The current status of this application has been adapted from the unitary application of civil procedural laws to the dual application of civil substantive law and procedural laws. The theoretical circles and judicial interpretations also affirmed that "when the the administrative laws are applicable to the administrative contract cases, the civil legal norms can be applied to the cases as well if they do not violate the mandatory provisions of the *Administrative Law* and the *Administrative Litigation Law*." The status of civil legal norms is gradually being elevated in administrative litigation. Although the civil substantive laws and procedural laws are both recognized in the administrative contract cases, they should still be give place for administrative legal norms. ie. "the administrative legal norms are prioritized and the civil legal norms come second." This principle of application reflects the priority of the application of administrative laws, which is also the intrinsic meaning of administrative litigation. However, in fact, the types of disputes involved in the administrative contract disputes are diverse. Therefore, it is not fair, reasonable and effective to resolve the disputes in the administrative contract for all disputes by upholding the principle of giving priority to administrative laws. For example, the "private" factor in administrative contract cases is an objective existence. In dealing with issues that are controversial due to "private" factors, civil legal norms should be given priority, and the principle of preferential application of administrative legal norms is thus inappropriate. The chaotic situation of this priority application of administrative legal norms presented by judicial practice that giving priority to administrative legal norms to civilian disputes must be examined and corrected. The correct approach should be to distinguish between different types of administrative contract disputes, and applying different norms and rules to different types of disputes. At the same time, it is necessary to adhere to the concept "for the parties of interests, the administrative litigation relief function can not be less than the civil litigation."

3. THE PRIORITY OF NORMATIVE APPLICATION: ADMINISTRATIVE LEGAL NORMS OR CIVIL LEGAL NORMS?

Administrative agreement disputes can be broadly divided into three types of disputes:[15] administrative disputes, civil disputes, and mixed disputes. The following is a further analysis of the normative application rules for disputes of different nature.

3.1 Administrative Disputes

If there are conflicts on one same issue, administrative legal norms should be applied while civil legal norms should be excluded. If there is no conflict, the administrative legal norms should be applied first, and civil legal norms come next.

[15] Liu, F. (2018). Dispute resolution mechanism based on PPP agreement. *International Symposium on Dispute Resolution between Government and Social Capital Cooperation Agreement.* Guanghua Law School of Zhejiang University, http://www.ghls.zju.edu.cn/chinese/Redir.php?catalog_id=68&object_id=369001, accessed August 31, 2018.

Administrative disputes are unilateral administrative actions made by administrative organs in accordance with the mandatory provisions of administrative legal norms or the principles of the administrative law. This action will cause controversy if it has an impact on the rights and obligations of counterparts of administrative organs. Specifically, these actions include those caused by mandatory regulations based on administrative legal norms, or the disputes arising from mandatory provisions of administrative legal norms that are transplanted into administrative agreements. The characteristic of this kind of controversy is that the basic actions that cause controversy are based on administrative legal norms which give the corresponding power and the needed responsibility to perform according to the laws to the administrative organ, and they only reflect the will of the administrative organ.

There are many mandatory provisions in the current regulations that can be transplanted into the administrative contracts. For example, Article 66[16] of the *Administrative Licensing Law* gives the administrative authority the power to supervise the franchise licenses, and has the responsibility to supervise the licensee on their development of limited natural resources and the use of limited public resource. The results of the supervision include the revocation of the licenses and other effective measures that are can ensure the licensee fulfill their obligations. In addition, there are provisions on the *Basic Farmland Protection Regulations*[17] about the revocation of the land use rights without compensation, and the relevant provisions on the revocation of exploration licenses in the *Regulation for Registering to Explore For Mineral Resources Using the Block System*.[18] Besides, due to the characteristics of the unilateral administrative behavior of administrative disputes, it is necessary to be consistent with the applicable rules of judicial review of administrative actions. At the same time as the application of administrative legal norms, civil legal norms that do not conflict with the mandatory provisions of administrative legal norms can be applied.

3.2 Civil Disputes

If there are conflicts on one same issue, civil legal norms should be applied while administrative legal norms should be excluded. If there is no conflict, the civil legal norms should be applied first, and administrative legal norms come next.

Civil disputes mainly refer to behaviors related to the stipulated clauses of the administrative organs in accordance with the civil legal norms. This kind of behavior does not involve the administrative organs exercising administrative powers, and merely the stipulated clauses between the parties through friendly negotiation. This type of behavior does not contain the contents of administrative legal laws, and only covers the rights and obligations in civil law.

3.3 Mixed Disputes

Civil legal norms are prioritized, and administrative legal norms come second.

A mixed dispute is a dispute in which a case that can either be resolved by applying administrative legal norms or can be resolved through civil legal norms. The mixed nature of such disputes is determined by the

[16] Article 66 of the *Administrative License Law of the People's Republic of China*: "Where a licensee fails to perform the obligation of exploiting and utilizing of natural resources in accordance with the law, or of utilizing public resources, the administrative organ shall order it to get right within a time limit; where the licensee fails to get right within the time limit, the administrative organ shall punish it in accordance with the relevant laws and administrative regulations."

[17] Article 18 of the *Regulations on the Protection of Basic Farmland*: "No organization or individual is allowed to idle or desolate basic farmland. For key construction projects which occupy basic farmlands and not using them for one year, the cultivation shall be resumed; for construction not started for more than one year, idle charges should be paid in accordance with the regulations. If the land has not been used for two consecutive years, upon approval by the State Council, the land use right is revoked without compensation."

[18] Article 29 of the *Regulation for Registering to Explore For Mineral Resources Using the Block System* stipulates: Anyone who prints exploration license without authorization, counterfeits exploration license, or infringes in any way upon any existing exploration licenses shall be in violation of the provisions of these Regulations. Any illegal gains shall be confiscated and a concurrent fine of up to 100000 RMB yuan may be imposed by the department responsible for geology and mineral resources under the people's government at or above the county level. If the case constitutes a crime, the personnel concerned shall be investigated for criminal responsibility according to law. Article 29 the following behaviors shall constitute violation of the provisions of these Regulations: 1) neglecting to put on record or report any circumstances relevant to these Regulations, refusing to accept official examination or supervision, or employing deception or trickery; 2)failing to meet the minimum exploration expenditure requirement; or 3)fails to begin construction on the exploration project within 6 months from the date of issue of the exploration license or halting the work-in-progress for 6 consecutive months without valid reason. These violations shall be ordered to be corrected within a prescribed time limit by the department responsible for geology and mineral resources under the people's government at or above the county level in accordance with the limits of authorities prescribed by the department in charge of geology and mineral resources under the State Council. If the parties concerned fail to make the necessary corrections within the prescribed time limit, a fine of up to 50000 RMB yuan shall be imposed. Should the licensee become obstreperous, the exploration license shall be revoked by the department that originally issued the license."

"public" and "private" attributes of the administrative contracts themselves. The administrative contracts are the same as the unilateral act of the administrative organ as both of their purpose is to realize the public interest and administrative goals. However, the administrative contracts are a kind of administrative acts of both sides which reflect the spirit of equal consultation and the concept of agreement between the administrative organs and their counterparts. It retains the attributes of administrative actions while are contracts in form. They have the mixed nature, and can be resolved by either administrative legal norms or civil legal norms. However, since the negotiation of the administrative contracts is its main feature, the administrative organ and the their counterparts must perform their respective duties in accordance with the contracts after the stipulation of the contracts. When a dispute arises, it is necessary to claim rights firstly within the framework of civil legal norms.

3.3.1 Disputes on the Rescission of the Contracts

Both the administrative legal norms and civil legal norms contain regulations for The exercise of statutory right of rescission. The exercise of statutory right of rescission in administrative legal norms is the exercise of administrative superiority right, and the exercise of statutory right of rescission in civil legal norms includes various different situations.[19] The exercise of these two kinds of rescission rights needs to followed a certain order. The statutory rescission of civil legal norms should be carried out first, and only after that the statutory rescission of administrative legal norms can be carried out. This is because the exercise of administrative superiority right is usually subject to strict restrictions.[20] The administrative superiority right are the unilateral disposal made by the administrative organ outside the framework of the *Contract Law*, ie. the administrative contracts can be continued to perform in accordance with the agreement, and they are only artificially changed or rescinded for public interest considerations. If the contractual purpose cannot be realized due to the breach of contract by the opposite party, the administrative organ can certainly adopt measures in accordance with the provisions of the *Contract Law* or the contract, and there is no need to exercise the administrative superiority right.

In the same token, for the object of the dispute - the trial of the rescission of the contracts also needs to follow the sequence mentioned above. First of all, the dispute should be judged on whether it meets the statutory rescission conditions in the civil legal norms, and only after that judge whether it meets the conditions for the exercise of the administrative superiority right. For example, in the case of Shouguang Zhongyou Kunlun Gas Co., Ltd. v. Shouguang Municipal Government and Weifang Municipal Government for their rescission of the government franchise contract,[21] Kunlun Gas Company failed to fulfill the goal of the contract due to delay in fulfilling the duties stipulated in the government franchise contract. Shouguang Municipal Government therefore reclaimed the franchise license of Kunlun Gas Company. Another example is the dispute between Beijing Zhongran Weiye Gas Company and Jiangsu Pei County Housing and Construction Bureau on the dispute of franchise rights contract,[22] Pei County Housing and Construction Bureau believes that the company has not been able to construct long-distance pipelines according to the franchise contract, causing users to bear high gas expenses, therefore unilaterally lifted the "Pei County Pipeline Gas Franchise Agreement." In these two cases, because the counterparts of the administrative organs did not fulfill their duties and the goal of the contract could not be fulfilled, the administrative organs lifted the franchise agreement by exercising the statutory right of rescission in the civil legal norms. The court only needs to judge whether the administrative organs' rescission was done in conformity with the statutory rescission conditions in the civil legal norms, and there is no need to judge whether the administrative organ's rescission is in conformity with the conditions for exercising the administrative superiority right.

3.3.2 The Dispute Over the Invalidity of the Contracts

Administrative legal norms stipulate the invalidity of administrative acts. Since administrative contracts are a kind of administrative acts, these stipulations can be applied to judge the invalidity of administrative contracts. On the other hand, civil legal norms also contain provisions for the invalidity of contracts. As contracts, the stipulations on contract invalidity in the civil legal norms should also be applied to administrative contracts. Article 15 (2) of the *Interpretation of Applicability* also affirms that applicable *Contract Law* and other laws can be applied to the request for confirmation of the invalidation of the contract by the counterparts of administrative organs. In the cases of Yu Qingnian v. Xiangyang

[19] The statutory rescission in civil legal norms refers to situations where force majeure, expected breach of contract, delay in the performance of the party and continual delay after urge, failure to perform, and failure to achieve the purpose of the contract. The exercise of the right of rescission is a unilateral law act, and the contract is rescinded after the notice of dismissal arrives at the other party. See Jiang, 2007, p.666)

[20] Such restrictions include: 1. Must be to prevent or remove significant harm to the public interest. 2. When making a unilateral adjustment or a unilateral rescission, the specific circumstances of the public interest shall be explained. 3. The unilateral adjustment is in line with the principle of proportionality, which minimizes the side effects. 4. The corresponding compensations should be given to the affected parties for the loss caused by the enforcement of the law. (For details, see the Supreme People's Court (2017) Supreme People's Court Application No. 3564 Administrative Ruling.)

[21] For details, please refer to the Shandong Provincial Higher People's Court (2017) Lu Xing, Final 191 Administrative Judgment.

[22] See Phoenix.com: "Who has the final say for the municipal public utility franchise?, http://news.ifeng.com/a/20160414/48453741_0.shtml, accessed on September 5, 2018.

Municipal Government requesting the confirmation of the invalidation of the "House Expropriation Compensation and Resettlement Agreement,"[23] Wei Shubin v. Yiyang County Government on administrative contract dispute,[24] and Jiang Dayu v. Chongqing High-tech Zone Administrative Committee administrative contract dispute,[25] the courts all affirmed that the contracts were invalid. Both stipulations on the invalidity of the contracts in civil legal norms and administrative legal norms are applicable to the judgement of the courts on the above-mentioned cases.[26]

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[23] For details, please refer to the Shen No. 191 Administrative Judgment of the Supreme People's Court (2018) Supreme Court.

[24] For details, please refer to the Shen No. 2128 Administrative Judgment of the Supreme People's Court (2018) Supreme Court.

[25] For details, please refer to the Zai No.49 Administrative Judgment of the Supreme People's Court (2017) Supreme Court.

[26] Article 75 of the *Administrative Litigation Law of the People's Republic of China*: "If an administrative act has an administrative subject that does not have an administrative subject qualification or has no basis for such a major and obvious violation of the law, and the plaintiff applies for confirmation that the administrative act is invalid, the people's court judgment would be that the administrative act is invalid."