

# Study on China's Judicial Review Mechanism of the Administrative Emergency Acts under Critical Situations

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**Abstract.** In recent years, emergencies have appeared a high frequency of occurrence. And administrative emergency power has performed its powerful functions in minimizing personal injury or death or property losses caused by emergencies. However, the rapid expansion of administrative emergency power has also resulted in many improper or illegal problems during the enforcement process. Therefore, as an interest balance mechanism, when judicial power intervenes in emergency actions, special arrangements should be made on its specific rules to distinguish it from the judicial review of normal administrative acts, and the principle of balance and limit should run through the system construction to innovate and reconstruct the judicial emergency review mechanism, so as to give an effective play to the main function of judicial review mechanism in protecting human rights, supervising administration and coordinating public and private interests.

**Keywords:** Judicial Review Mechanism; Administrative Emergency Power.

## 1. Lack of Restriction on Administrative Emergency Power

In terms of internal administrative system, under critical situations, restrained from efficiency and timeliness, it is difficult for superior administrative organs to effectively play their role of review, supervision and guidance to subordinate organs within a reasonable period of time. In addition, when dealing with emergencies, in consideration of its urgency, a tolerant and permissive attitude is usually taken on the administrative organs on the basis of adhering to the principle of administrative legitimacy, while the principle of rationality is ignored and improper measures are allowed within a certain range.

Outside the administrative system, the judicial power is also difficult to serve its function of restriction. The attribute of judicial power itself is negative modesty, which is often in a passive and lagging state in rights. From the perspective of legislation, China's existing law, *Emergency Response Law of the People's Republic of China*, does not provide relevant regulations on judicial emergency mechanism in peculiar critical situations. So the judicial review still needs to be carried out in accordance with normal procedures and modes. This will undoubtedly lead to the absence of emergency legality and expose civil rights and interests to a threatening state without protection.

## 2. The Practical Dilemma of Judicial Review Against Administrative Emergency Acts

### 2.1 Legislative Deficiency of Emergency Judicial Review

As a special and abnormal administrative power, whether emergency administrative power is included in the scope of administrative litigation is the key to the effective exercise of judicial review power. According to China's current *Administrative Procedure Law* and relevant judicial interpretations, there is no clear provision on whether administrative emergency acts should be included in the scope of administrative litigation. In other separate laws and regulations, there is nor specific and clear provision on the review of whether the administrative emergency act itself violates the principle of administrative legitimacy or rationality, or on whether the emergency administrative act can be revoked by the court due to violation of the law. This has made it difficult for obligee to seek the basis of legality of judicial review of administrative emergency acts.

As mentioned above, there is no relevant provisions on emergency judicial review system in *Emergency Response Law of the People's Republic of China*. With no provisions on judicial emergency procedures and modes, in a critical situation, it is difficult to evaluate and deal with administrative emergency acts through normal judicial review mode. It can be seen that on the one hand, China's emergency legal system brings administrative emergency acts into the track of legalization, on the other hand, it does not introduce judicial review as an effective mechanism to ensure the legitimacy of emergency acts.

## **2.2 Tardiness and Passiveness of Judicial Review**

In judicial practice, dominated by the notion that emergency protection takes precedence over everything, the court generally chooses to avoid and refuse to accept the lawsuits against administrative emergency actions. Besides, under the adverse effects of emergencies, the order of the court's daily work has been affected, which is more difficult to effectively and timely launch the judicial review procedure. Generally speaking, the court adopts a negative and evasive attitude towards the judicial review of administrative emergency acts. Its slow and passive characteristics will undoubtedly endanger the contingency legality under emergencies and potentially put civil rights and interests in a long-term dangerous state.

## **2.3 Insufficient Supporting Mechanism for Judicial Emergency Review**

The characteristics of administrative emergency acts enable it to take effective prevention and control measures in a short time to maintain the overall social order and public security. But it does not match the corresponding judicial review power. First, in critical situations, the judicial emergency mechanism lacks relatively centralized judicial resources to conduct centralized review. Due to the wide range and far-reaching impact of administrative emergency power, it is difficult for a single department of the court to fully cover it up. Second, the jurisdiction of the court is vague. In general, the emergency judicial review cases under crises involve a wide range of types, so there are difficulties and ambiguities in determining the competent court. Moreover, a single jurisdiction of the court is difficult to match with the emergency administrative power, and it is hard to overcome the regional differences and trial level obstacles in the original judicial procedure. Third, there is a lack of specialized judges to deal with emergencies. The urgency of critical situations often require administrative organs to make a large number of high-density administrative acts in a short time, resulting in an explosive growth in the number of cases reviewed by the court. However, in existing judicial system, most of the judges are set according to administrative divisions, so the deployment of court staff is not convenient and it is difficult to concentrate on trying a certain type of cases in a short time.

# **3. Construction of Emergency Judicial Review Mechanism**

## **3.1 Improve the Legislative Provisions and Expand the Scope of Accepting Cases**

Firstly, the scope of accepting cases in administrative litigation should be expanded and clearly stipulated in the form of legal norms. For the specific administrative emergency acts of administrative organs, citizens have the right to directly file a lawsuit. And the administrative emergency acts should be included explicitly in the actionable scope of specific administrative acts by law, so as to fulfill the normative function of the judicial review power on administrative emergency acts.

Second, extend the scope of judicial review to the review of emergency normative documents. In judicial practice, in the face of critical situations, administrative organs will formulate temporary emergency management decisions and measures according to the legal norms scattered in detailed provisions. During judicial review, normative documents should also be included in the scope of review along with the sued specific administrative act for the purpose of the comprehensiveness of supervision.

### 3.2 Normalizing Judicial Review Standards

Firstly, the standards of illegal infringement of administrative emergency acts. The academic circles put forward that the fundamental rights that cannot be derogated from should be taken as the standard for the court to review whether the administrative act is illegal or infringing. For the civil rights that cannot be infringed under any conditions, such as the right to life, the right to dignity, the administrative emergency act has no right to restrict or even deprive under crises. Therefore, these rights can be used as the standard for the court to review the illegal infringement of the administrative organ to limit the exercise of the administrative emergency power.

Secondly, the illegal standard of administrative emergency procedures. The biggest difference between routine administrative acts and emergency administrative acts is the application of administrative procedures. Under daily condition, measures to restrict civil personal and property rights, such as administrative acts, need to go through rigorous and complex procedures, while in an emergency, the procedures are relatively simplified. The focus of the court's judicial review is to investigate whether the procedure followed by the administrative emergency act meets the specific conditions at that time and whether the minimum procedural justice is guaranteed.

Thirdly, the standard of unreasonable administrative emergency acts, that is, to judge whether administrative acts violate the principle of administrative rationality. In judicial review, we should raise the evaluation standard of unreasonable administrative acts, and we do not determine that the administrative act is unreasonable until it reach the state of obviously unreasonable. So that we can ensure the normal exercise of administrative power in case of crises.

### 3.3 Build a Supporting Mechanism for Judicial Emergency Review

Administrative emergency actions usually have the characteristics of expansiveness, centralization and urgency. The corresponding judicial review mechanism should also be equipped with the supporting facilities that can integrate all resources, concentrate judicial forces and try cases in a timely and effective manner. We can build and improve the judicial review mechanism from the following aspects: first, we should integrate and concentrate judicial resources to conduct a comprehensive review of the legitimacy and rationality of administrative emergency acts. For example, we can unite multiple legal departments to concentrate on major events, or set up temporary courts across administrative divisions and special courts for jurisdiction, or collect professional talents in various fields, so as to coordinate human, material and financial resources to conduct timely and effective review. Second, in order to deal with the high-frequency and large-quantity administrative emergency decisions and measures, we can set up temporary judges or mobile judges to use the resources of all parties flexibly, and gather the strength of judges and other legal staff for centralized trial, for the sake of solving the problems of large quantity and time efficiency. Third, considering the urgency of time in critical situations, we can establish an emergency quick adjudication channel in order to effectively carry out judicial review according to more convenient and fast procedures. Basing in written trial and supplemented by court trial, this channel adopts simple procedure on the premise of ensuring quality and efficiency, and strictly controls the trial period.

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