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The Principle of Proportionality and the Principle of Proportionality between Offense and Punishment in China's Administrative Penalty Discretion: Toward a Coordinated Application Framework

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Abstract: This paper examines the normative relationship between the principle of proportionality and the principle of proportionality between offense and punishment in the exercise of administrative penalty discretion in China. It focuses on whether, and to what extent, the general principle of proportionality retains an independent function where the more specific requirement of proportionality between offense and punishment has already been established. Drawing on theoretical analysis and selected judicial cases, this paper argues that the two principles are closely related but perform distinct and complementary functions. The principle of proportionality between offense and punishment provides a substantive standard for assessing whether the severity of a sanction corresponds to the nature, circumstances, and consequences of the violation, whereas the principle of proportionality provides a structured framework for examining the relationship between regulatory purposes, administrative measures, and individual burdens. Building on this, this paper proposes a two-level review model that combines the substantive assessment of whether a penalty is appropriate with a structured review based on the principle of proportionality. This approach not only serves to more effectively constrain the exercise of discretion in administrative penalties, but also helps administrative authorities to provide a more comprehensive justification for their penalty decisions, while offering the courts a clearer analytical framework for reviewing administrative penalties.

Keywords: Principle of Proportionality; Proportionality between Offense and Punishment; Administrative Penalty Discretion; Judicial Review

1. Introduction

Discretion in the imposition of administrative penalties plays a vital role in maintaining public order and safeguarding the public interest. However, in the absence of effective control standards, the exercise of administrative discretion may also lead to disproportionately severe penalties or inconsistencies in law enforcement. In China, the principle of proportionality between offense and punishment has been established as a specific requirement for administrative penalties, stipulating that penalties must be commensurate with the facts, nature, circumstances, and degree of social harm of the offense. Nevertheless, whether the principle of proportionality between offense and punishment can fully replace the more general principle of proportionality in regulating administrative penalty discretion remains a matter requiring further research.

This paper examines the relationship between the principle of proportionality and the principle of proportionality between offense and punishment in the exercise of administrative penalty discretion in China. Through theoretical analysis and an examination of judicial practice, this paper argues that the two principles fulfil distinct yet complementary functions. The principle of proportionality between offense and punishment provides substantive criteria for determining the severity of a penalty, while the principle of proportionality offers a structured framework for the justification and review of discretionary decisions. This paper further contends that the coordinated application of both principles contributes to the refinement of the regulation of

administrative penalty discretion.

2. The Relationship between the Principle of Proportionality and the Principle of Proportionality between Offense and Punishment

The relationship between the principle of proportionality and the principle of proportionality between offense and punishment has become an important issue in the study of administrative penalty discretion. Although both principles aim to prevent excessive exercise of administrative power and ensure a reasonable relationship between public objectives and individual burdens, they operate at different normative levels. The principle of proportionality functions as a general principle of administrative law applicable to various administrative activities, while the principle of proportionality between offense and punishment specifically regulates the relationship between unlawful conduct and administrative sanctions.

To clarify their respective functions and interaction, this section first examines the general role of the principle of proportionality in administrative law and then analyzes the specific function of proportionality between offense and punishment in administrative penalties. It argues that the two principles should not be understood as alternatives, but as complementary standards for controlling administrative penalty discretion.

2.1 The Principle of Proportionality as a General Principle of Administrative Law

The principle of proportionality is a fundamental principle of administrative law that restricts the exercise of public power by requiring administrative measures to maintain an appropriate relationship between regulatory objectives and individual burdens. Unlike a simple requirement of legality, proportionality focuses on whether the means adopted by administrative authorities are justified in light of the objectives pursued [1].

In traditional administrative law theory, proportionality is generally examined through three elements: suitability, necessity, and proportionality in the strict sense. The suitability requirement asks whether an administrative measure can contribute to achieving a legitimate objective; the necessity requirement requires the selection of the least restrictive measure among effective alternatives; and proportionality in the strict sense requires balancing the public interests achieved against the adverse effects imposed on individuals [2]. Through this structured review, proportionality provides not only a substantive limitation on administrative power but also a methodology for reviewing administrative discretion.

In China, although the principle of proportionality is not expressly formulated as a general statutory provision, its normative basis and application paths have been widely discussed in administrative law scholarship. Scholars have emphasized that proportionality should not only serve as a standard for administrative decision-making but also provide a basis for judicial review of administrative discretion [3].

2.2 The Principle of Proportionality between Offense and Punishment in Administrative Penalties

The principle of proportionality between offense and punishment is a specific principle governing administrative penalties. Article 5 of China's Administrative Penalty Law provides that the establishment and implementation of administrative penalties shall be based on facts and shall be commensurate with the facts, nature, circumstances, and degree of social harm of the violation. This provision establishes a direct connection between the seriousness of unlawful conduct and the severity of administrative sanctions.

Compared with the general principle of proportionality, the principle of proportionality between offense and punishment focuses more specifically on whether the penalty corresponds to the violation. It requires administrative authorities to accurately assess the seriousness of unlawful conduct and determine whether the imposed sanction is appropriate. The normative structure of this principle involves not only the identification of the violation but also the evaluation of whether the punishment is commensurate with the degree of responsibility [4].

However, the principle of proportionality between offense and punishment cannot completely replace the general principle of proportionality. Although both principles seek to prevent excessive administrative penalties, they perform different normative functions. The former mainly determines whether the severity of punishment corresponds to the violation, while the latter further examines the justification, necessity, and balance of administrative

discretion [5]. Recent scholarship has further suggested that the principle of proportionality may provide a more structured standard for determining whether an administrative penalty satisfies the requirement of proportionality between offense and punishment [6].

Therefore, the two principles should be understood as complementary rather than substitutive. The principle of proportionality between offense and punishment provides a substantive standard for determining sanction severity, while the principle of proportionality provides a broader framework for the justification and judicial review of administrative penalty discretion.

3. Judicial Practice: Different Functions of the Two Principles in Administrative Penalty Review

Although the principle of proportionality and the principle of proportionality between offense and punishment share the common objective of preventing excessive administrative penalties, their functions in judicial review are not identical. Judicial practice demonstrates that proportionality between offense and punishment primarily concerns whether the severity of a sanction corresponds to the seriousness of the violation, while the general principle of proportionality provides a broader framework for reviewing the rationality and justification of administrative discretion.

3.1 The Substantive Function of Proportionality between Offense and Punishment: The Fang Linfu Case

The Fang Linfu case demonstrates the substantive function of the principle of proportionality between offense and punishment in controlling administrative penalty discretion. In this case, Fang Linfu Roasted Seeds and Nuts Shop used absolute advertising expressions such as “the best” and “the highest quality” in its commercial advertisements. The market supervision authority determined that such expressions violated the relevant provisions of the Advertisement Law and imposed a fine of RMB 200,000.

The dispute before the court was not primarily whether the administrative authority had the power to impose a penalty, but whether the amount of the penalty corresponded to the seriousness of the violation [7]. Although the use of absolute advertising terms such as “the best” and “the highest quality” constituted a breach of the relevant administrative regulations, the court did not base its judgment solely on the unlawful act itself, but instead focused on the specific circumstances of the act and examined whether the penalty imposed was proportionate to the actual harm caused and the degree of responsibility of the violator.

The court held that the advertisements in question were primarily displayed within the business premises and on product packaging, and that their scope of dissemination and social impact were relatively limited. Furthermore, the court took into account the specific circumstances of the business operations and the actual consequences of the violation. Taking all these factors into consideration, the court concluded that the original penalty was not sufficiently proportionate to the seriousness of the violation, and that the administrative authority had failed to give due consideration to the specific circumstances of the case when determining the amount of the penalty.

The Fang Linfu case illustrates that the principle of proportionality between offense and punishment functions as a substantive standard for reviewing administrative sanctions. Administrative penalties should not be determined solely by the existence of an unlawful act or by the statutory range of punishment available to the authority. Instead, administrative authorities must assess the degree of responsibility arising from the violation by considering the facts, nature, circumstances, and social harm of the conduct.

This case also demonstrates that legality review alone is insufficient to control administrative penalty discretion. Even when an administrative authority has legal authorization and the violation has been established, the penalty may still be improper if its intensity exceeds the level justified by the circumstances of the case. Therefore, proportionality between offense and punishment serves as a direct criterion for determining whether administrative sanctions remain within reasonable limits.

3.2 The Independent Role of Proportionality Review: The Chen Chao Case

Different from the Fang Linfu case, the Chen Chao case demonstrates that proportionality review performs a function beyond the simple correspondence between unlawful conduct and administrative sanctions. The case concerned an

administrative penalty imposed on Chen Chao, who provided passenger transportation services through an online ride-hailing platform without obtaining the required operating qualification.

The competent administrative authority for transport considered that Chen Chao's actions constituted the unauthorized operation of a passenger transport business and, on that basis, imposed an administrative penalty upon him. The main issues before the court concerned not only whether the administrative authority had a legal basis for imposing the penalty, but also whether this specific penalty constituted a reasonable exercise of administrative discretion.

In reviewing the penalty decision, the court examined the relationship between the regulatory objective and the actual burden imposed on the individual by the penalty. The court held that the regulation of passenger transport activities is necessary for maintaining transport order and safeguarding public safety; however, it also noted that online ride-hailing represents an emerging form of economic activity with certain social value. Consequently, administrative regulation must not focus solely on maintaining the existing regulatory framework, but must also take into account the distinctive characteristics of new business models and the context in which they have developed.

The significance of the Chen Chao case lies in the fact that the court conducted a more in-depth review of the grounds on which the administrative authority exercised its discretion. The court did not merely compare the severity of the established unlawful conduct with that of the penalty, but went further to examine whether the administrative authority had fully taken into account the specific circumstances of the case, including the actual extent of social harm caused by the conduct, the role played by the party concerned in the transaction, and the consequences that could reasonably be attributed to the conduct. This scrutiny focused not only on whether the final penalty was appropriate, but also on whether the exercise of administrative discretion itself was sufficiently justified.

From the perspective of the principle of proportionality, this case demonstrates that administrative penalties require more than merely a formal link between the unlawful act and the penalty. The administrative authority must also explain why a particular penalty serves to achieve regulatory objectives, and whether the burden imposed on the individual remains within reasonable limits. In this sense, the principle of proportionality provides a structured method of reviewing administrative discretion by examining the reasonable relationship between the public interest and individual rights.

Consequently, the Chen Chao case exemplifies the complementary relationship between the principle of proportionality and the principle of proportionality between offense and punishment. While the principle of proportionality between offense and punishment focuses primarily on whether the severity of the penalty is commensurate with the severity of the offense, the principle of proportionality provides a broader framework for reviewing the justification and reasonableness of the administrative authority's discretionary choices. As Chen Taiqing has pointed out, the judicial application of the principle of proportionality between offense and punishment requires the court to take into account, in a comprehensive manner, various factors relating to the unlawful act and the penalty; this also indicates that the review of administrative penalties requires a more structured approach [8].

3.3 Substantive Determinations and Structured Review in Administrative Penalties: The Distinct Functions and Coordination of the Two Principles

A comparison of the Fang Linfu case and the Chen Chao case demonstrates that, in the review of administrative penalties, while the principle of proportionality between offense and punishment and the general principle of proportionality are interrelated, they operate at different levels.

The Fang Linfu case primarily reflects a substantive assessment of administrative penalties. The core issue in this case was whether the severity of the penalty exceeded the degree of responsibility arising from the unlawful act. In this sense, the principle of proportionality between offense and punishment can be directly applied to determine whether the severity of the penalty is appropriate.

By contrast, the Chen Chao case exemplifies a broader application of the principle of proportionality. The court not only examined the relationship between the unlawful act and the penalty, but also took into account the regulatory objectives, the characteristics of emerging industries, and the burden imposed on the individual by the penalty. This reflects a structured review of administrative discretion

rather than a simple comparison between offense and penalty.

Therefore, the two principles should not be regarded as alternatives. Proportionality between offense and punishment provides the substantive foundation for determining the appropriate level of sanction, while the general principle of proportionality supplies a broader framework for reviewing the reasoning and justification of administrative decisions. Their combined application enables courts to review both the outcome and the reasoning process of administrative penalty decisions. Recent empirical research on judicial review of administrative penalties also indicates that the application of the "manifestly improper" standard remains inconsistent, particularly with respect to the review of discretion benchmarks, relevant circumstances, and general principles of administrative law [9].

4. Toward a Structured Review Model for Administrative Penalty Discretion

The preceding analysis demonstrates that the principle of proportionality between offense and punishment and the general principle of proportionality perform different functions in administrative penalty review. The former focuses on whether the severity of a sanction corresponds to the seriousness of the violation, while the latter examines whether the exercise of administrative discretion is reasonable and justified.

Therefore, these two principles should not be understood as competing standards. Instead, they constitute a complementary framework for controlling administrative penalty discretion. Based on this distinction, this paper proposes a two-level review model. The first level concerns the determination of sanction severity through proportionality between offense and punishment, while the second level concerns the justification of discretionary choices through proportionality review.

4.1 Determining the Severity of Penalties in Accordance with the Principle of Proportionality between Offense and Punishment

When making a decision on an administrative penalty, it is first necessary to determine the degree of responsibility corresponding to the unlawful act. The principle of proportionality between offense and punishment provides a substantive standard for this assessment. Administrative authorities must not determine the specific penalty merely on the grounds that an unlawful act has been established, or solely on the basis of the range of penalties prescribed by law; rather, they must make their assessment in light of the specific circumstances of the unlawful act, including its nature, the consequences it has caused, the extent of the harm to society, and the degree of responsibility to be borne by the offender.

Consequently, determining whether a penalty complies with the principle of proportionality between offense and punishment does not involve a mere mechanical comparison between the offense and the penalty; rather, it requires a comprehensive assessment of whether the penalty imposed accurately reflects the actual degree of responsibility that the offender should bear. Even where different cases fall under the same statutory category of offense, varying degrees of penalty may be required due to differences in the specific facts of the case, the social consequences caused, and the degree of responsibility borne by the offender [10].

In this sense, the principle of proportionality between offense and punishment constitutes a substantive restriction on the exercise of discretion in the imposition of administrative penalties. This principle requires administrative authorities to establish a reasonable correspondence between the unlawful act and the penalty, thereby ensuring that the penalty imposed does not deviate from the actual degree of responsibility that the offender should bear.

In practice, administrative penalty discretion benchmarks provide an important institutional mechanism for transforming abstract legal principles into relatively concrete enforcement standards. By establishing classifications of violations, aggravating or mitigating circumstances, and corresponding penalty ranges, discretion benchmarks contribute to consistency, predictability, and equality in administrative enforcement [11].

However, discretion benchmarks should not replace case-specific judgment. Their function is to guide administrative decision-making rather than rigidly determine the outcome of individual cases [12]. Administrative authorities must still examine the particular circumstances of each case and ensure that the final sanction remains consistent with the substantive requirement of proportionality between offense and punishment.

4.2 Reviewing Discretionary Choice through the Principle of Proportionality

After determining the appropriate range of sanctions, administrative authorities must further justify the specific choice of penalty. This is where the general principle of proportionality performs an independent function. Unlike proportionality between offense and punishment, which primarily concerns the correspondence between responsibility and sanction severity, proportionality review examines whether administrative discretion has been exercised through a reasonable decision-making process [13].

From the perspective of judicial review, proportionality provides a structured approach for examining the reasoning underlying administrative decisions. This standard of review enables the courts to go beyond a formal review of statutory authorization and to assess whether the administrative authority has provided sufficient grounds for its choice of a particular penalty.

This standard of review is particularly important in regulatory areas involving complex social interests and emerging forms of economic activity.

Administrative authorities may need to balance multiple objectives, including maintaining regulatory order, protecting public interests, and avoiding unnecessary restrictions on individual rights. In these circumstances, proportionality review requires administrative decisions to demonstrate a reasonable relationship between regulatory objectives and the burdens imposed on individuals.

Accordingly, proportionality does not replace proportionality between offense and punishment. Instead, it extends the scope of review from the relationship between violation and sanction to the rationality of administrative decision-making itself.

4.3 Establishing a Two-Level Review Model for Administrative Penalties

Based on the above analysis, this paper argues that administrative penalty discretion should be reviewed through a two-level structure.

At the first level, proportionality between offense and punishment determines the substantive boundary of administrative sanctions. It addresses the question of how much punishment is justified by the violation. The primary concern at this stage is whether the severity of the sanction corresponds to the degree of responsibility established by the facts of the case.

At the second level, the general principle of proportionality examines the justification of administrative choices. It addresses the question of why a particular sanction is selected and whether such a choice is reasonable. This level focuses primarily on the relationship between regulatory objectives, administrative measures, and the burden on the individual.

This two-tier review model further clarifies the relationship between the two principles. The two are neither entirely identical concepts nor mutually exclusive principles from which one must be chosen over the other; rather, they play a role at different stages of the review of administrative penalties. The principle of proportionality between offense and punishment provides a substantive basis for determining the severity of the penalty, while the review based on the principle of proportionality offers a structured method for assessing whether administrative discretion has been exercised reasonably [14].

Through this coordinated application, judicial review of administrative penalties is no longer confined to a simple assessment of whether a penalty is excessive, but can develop into a more comprehensive form of review: one that examines not only the final outcome of the penalty, but also the grounds on which the administrative authority based its decision and the reasoning behind it.

5. Conclusion

This paper argues that the principle of proportionality between offense and punishment and the general principle of proportionality play complementary roles in the review of administrative penalties. The former requires a reasonable correspondence between the unlawful act and the penalty, thereby defining the substantive boundaries of sanctions; the latter provides a structured framework for reviewing administrative discretion. Through an analysis of the Fang Linfu and Chen Chao cases, this paper demonstrates that effective control over administrative penalties requires not only an assessment of whether the penalty is excessive, but also a review of whether the reasons given by the administrative authority for its specific exercise of discretion are sufficient.

Based on the above analysis, this paper proposes a two-tier review model: at the first tier, the

severity of the penalty is determined through the principle of proportionality between offense and punishment; at the second tier, discretionary decisions are reviewed through the principle of proportionality. This approach to review clarifies the respective spheres in which each principle operates and provides a more systematic method for controlling administrative penalty discretion. At the same time, this model demonstrates that reasonable administrative law enforcement requires not only that the outcome of the penalty be substantively fair, but also that administrative authorities provide sufficient justification for their discretionary choices when making decisions.

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