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Constructing a Judicial Review System to Regulate China's Administrative Monopoly

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Abstract

The development of market economy and the construction of country by law make it necessary to regulate administrative monopoly effectively. It is the most important for us to regulate administrative monopoly by law, the key of which is to construct a judicial review system of administrative monopoly. In view of the widespread existence of administrative monopoly and its serious hazards and some institutional deficiencies on judicial review of administrative monopoly in China, it is necessary to take effective measures to overcome those obstacles, and then establish sound judicial review rules of administrative monopoly to control administrative monopoly eventually.

Keywords

Judicial Review, Regulation, Administrative Monopoly, Competition

1. Introduction

Taking the interests of a certain region or department as the focus, administrative monopoly forcibly divides the national market into a closed and disconnected market space, closes the economy of a certain region or department into a regional blockade and departmental monopoly, artificially divides the market, destroys the national unified market system, and the result is not conducive to the optimal allocation of resources by the market. It causes a lot of waste of resources and hinders the establishment and healthy development of market economy. Therefore, administrative monopoly blurs the boundary between the government and the market, weakens the government's public service function, damages the business environment, and deviates from the predictability, credit and standardization required by the market economic order.

So-called administrative monopoly, also known as administrative restrictive competition behavior, is that the government and its affiliated agencies abuse

executive power to restrict competition behavior (Wang, 2007a). In terms of subject, the subject of administrative monopoly is the administrative organ and the organization authorized by laws and regulations with the function of managing public affairs. In terms of behavior, administrative organs and public organizations have abused administrative power. In terms of effect, the abuse of administrative power by administrative organs and public organizations causes the effect of excluding, limiting and damaging competition. This is the fundamental reason why administrative monopoly is regulated by Anti-Monopoly Law (Shi, 2007a). Administrative monopoly mainly includes the forms of administrative compulsory trading, local protectionism, improper intervention in enterprise production & management and so on. Compared with economic monopoly, administrative monopoly has very distinct characteristics: First, the implementation subject of administrative monopoly is not the market subject, but administrative organs and organizations authorized by laws and regulations to manage public affairs. Second, administrative monopoly is realized mainly by means of the executive power with the force of enforcement in the field of market economy. Third, administrative monopoly is usually embodied in abstract administrative acts, such as issuing government rules, regulations, orders, resolutions or other normative documents with universal binding force. Fourth, administrative monopoly has greater social harm than economic monopoly because administrative organs with administrative coercive power are more likely to carry out monopolistic behavior, which not only destroys the unified, open, fair and orderly market system, but also causes the loss of administrative efficiency, the decline of government credibility and the destruction of business environment.

Administrative monopoly is manifested through administrative actions, so administrative monopoly can be divided into abstract administrative monopoly and specific administrative monopoly according to ways and means of administrative actions. The so-called abstract administrative monopoly means that administrative subjects use administrative regulations and normative documents as general approaches to engage in monopolistic behavior. It can be seen that administrative subjects use abstract administrative actions as approaches to engage in monopolistic behavior, but not all abstract administrative actions will lead to an abstract administrative monopoly. The so-called specific administrative monopoly means that administrative subjects engage in monopolistic behaviors through specific administrative actions. In contrast, the former has greater harm because it is targeted at most non-specified people and damages their interests. In real economic life, the number of abstract administrative monopolies is larger than that of specific administrative monopolies, and many specific administrative monopolies are also based on abstract administrative monopolies. Therefore, regulating the abstract administrative monopoly should be the focus of anti-administrative monopoly (Zheng, 2002).

China's current Anti-Monopoly Law makes special provisions on administrative monopoly, which not only makes up for the defects of low legislative level

and insufficient authority of many previous administrative laws and regulations, but also makes relatively comprehensive provisions on specific administrative monopoly behaviors and abstract administrative monopoly behaviors. However, there are some limitations in the regulation of administrative monopoly. First, the Anti-Monopoly Law does not use the concept of "Administrative Monopoly", but only proposes that "administrative organs abuse administrative power to exclude and restrict competition". The result is that the lack of a clear legal definition of "Administrative Monopoly" and the inconsistency of people's understanding will have a negative impact on the enforcement of the Act. The independence, authority and work efficiency of Anti-Monopoly Law enforcement agencies have greatly affected the effective regulation of administrative monopoly. Third, the current Anti-Monopoly Law has added the fair competition review system to the regulation of abstract administrative monopoly behaviors. That is, fair competition review should be conducted when making policies involving the economic activities of market entities. And the policy should not be issued if it has contents that exclude or restrict competition after the review. Therefore, the fair competition review system is of great significance for regulating administrative monopoly, promoting fair competition in the market and optimizing the business environment of the private economy. However, the application of this system still faces certain difficulties, such as insufficient implementation effect due to the characteristics of self-review and possible misuse of exception provisions. In addition, the supervisory and enforcement agencies of the system (mainly the State Administration for Market Regulation) are not high enough, resulting in the Act enforcement effect is not ideal, and the deterrent force of law cannot be fully exerted. In order to alleviate these difficulties, the intervention of judicial power becomes necessary. And regulation of administrative monopoly depends mainly on constructing a sound system of judicial review of administrative monopoly is the ultimate assurance to control administrative monopoly.

2. China's Need for Judicial Review to Regulate Administrative Monopoly

Since the administrative monopoly is caused by abusing administrative powers, it is necessary "to restrict power with power" to control it. Judicial review is an effective method to restrict the executive power, which also is the final methods to protect civil rights. The reasons for judicial review of the administrative monopoly (especially abstract administrative monopoly) are mainly based on the following factors:

2.1. To Fulfill WTO Rules and Promote Administration by Law

WTO requires the Member States to provide free and fair environment for competition. According to its provisions, administrative actions of hindering fair competition in international trade should be subject to judicial review. Therefore, administrative monopoly as an administrative action should be subject to

judicial review. In addition, administration by law is the basic requirement and reflection of modern administrative law, and the administrative monopoly actions by the government and its subordinate departments not only violate the legitimate rights and interests of other operators, but also undermine the interests of consumers. Therefore, to construct judicial review system of administrative monopoly can effectively monitor economic activity of the executive branches.

2.2. To Reduce Damages of Administrative Monopoly

The main reason that administrative monopoly comes into being is not enterprises' own economic power, but executive power and administrative actions relied on by enterprises, which is an unreasonable abuse of the executive power and administrative action. Because the abuse leads to the limitations and exclusion to competition, its impact and harm is even more than pure economic monopoly (Qi, 2006). In addition, the non-actionable provisions of abstract administrative actions in the existing laws, as well as growing expansion of executive powers, result in more and more unlawful, harmful problem of administrative monopoly. Providing the relevant subjects with the right to prosecute administrative monopolies (including abstract administrative monopoly) by law and the court with the power to trial, the illegal status of the administrative monopoly can be changed; At the same time, through judicial restraint of the increasing expansive executive power, the harmness of administrative monopoly can be reduced to control over administrative monopoly as great as possible.

2.3. To Make up for Weak Control over the Administrative Monopoly by Administrative Enforcement

At present, Chinese industrial and commercial authority is one of the anti-trust authorities. On the one hand, from the perspective of the limits of authority, the sectors have no power to review whether or not the regulations by the government are in violation of the relevant competition law; On the other hand, for the local business sectors are in the charge of the local government, they are often directly or indirectly involved in the local administrative monopolistic actions. Hence, anti-administrative monopoly by the business sectors is no doubt similar to the situation "to be the judge in his own case", which is unrealistic (Tao & Liu, 2005). Because of the consistency of interests and the asymmetry of information, the lack of internal supervision of the administrative system and external supervision of legislature lead to the passive and ineffective supervision of administrative power. Only by virtue of judicial power can the relative persons be fully mobilized to protest against the administrative monopoly in order to curb the emergence and spread of administrative monopoly more effectively.

2.4. To Protect Interests of the Relative More Fully

The external supervision of legislature over executive powers is often too much emphasis on protecting the interests of the country and the public, neglecting the interests of the individual or the relative within a certain range (Zhao, 2009).

Judicial supervision over executive power is more focused on protecting the interests of the relative persons, because judicial review of administrative monopoly is most initiated by t the relative persons of monopolistic practices through litigation, and their vital interests is closely related to the administrative monopolistic actions, they have the initiative and enthusiasm for protection against the administrative monopoly. Expanding the plaintiff scope of the litigation may more widely protect the interests of the relative persons in administrative monopolies. Through the judicial review system, the victims' rights to claim damages compensation can be fully and effectively protected.

3. Feasibility of Judicial Review of China's Administrative Monopoly

In China, judicial review of administrative monopoly is not only necessary but also feasible. Here are the main reasons.

3.1. Existing Law Provided Some Basis on Judicial Review of Administrative Monopoly

On the one hand, China's "Administrative Procedure Law" excludes abstract administrative actions from the scope of judicial actions, but in trialing a specific administrative action, the Act does not prohibit the court from reviewing the abstract administrative action on which the specific administrative action is based. Article 63 of the Act provides that courts trial administrative cases according to the law and administrative regulations, local regulations, autonomous regulations and separate regulations; and stipulates that the court trial administrative cases by reference to ministries rules and local regulations. This shows the court has the power to choose the applicable rules and regulations, and the court can independently review the normative documents below the level of the Regulations to decide whether to trial cases by it. In addition, the relevant procedure rules of administrative cases in the Act provide direct legal basis of specific administrative monopoly actions for the courts. On the other hand, the administrative monopoly has been in the regulatory scope of "Anti-monopoly Law", and the Act dedicates a chapter to provide the forms of administrative monopoly, thus to some extent it is helpful for the court to determine the legality of administrative action. In addition, the relevant provisions in interpretation of some issues by the Supreme People's Court on the implementation of the "Administrative Procedure Law of The People's Republic of China" prohibit the violation of the enterprise management autonomy right and the fair competition right in the specific administrative acts, which also provides the reference for judicial review of administrative monopoly.

3.2. Practice of the Existing Legal System Has Accumulated Experience for Judicial Review of Administrative Monopoly

Since the implementation of the Administrative Review Law, regarded as the internal procedures to resolve administrative disputes, a certain amount of expe-

rience in the judicial review of abstract administrative actions has been accumulated, which can provide the practical reference for judicial review of administrative monopoly (especially the abstract administrative monopoly) in the future. It is particularly valuable that in judicial practice, according to practical requirements, the courts have also trialed some administrative litigation cases related to administrative normative documents, and accumulated some useful experience. For example, Article 3 of "Notification on Timely Trialing the Cases Caused by Excessive Burden on Farmers" issued by the Supreme Court in 1993 provides that for an appeal against such situations that the executive authorities randomly increase the burden on peasants and illegally ask the farmers bear the costs or labor in the administrative proceedings cases, the court shall trial those cases and revoke the unreasonable decision by law; and make the judgments of compensation for farmers' economic losses caused by "exaction" according to law. And so in adjudicating such cases, all levels of courts fully play the roles of trial functions, and ensure the country reduces the burden on peasants smoothly through the strict enforcement of law, and also provide a valuable reference for establishment of the judicial review system of administrative monopoly.

3.3. Judicial Review System of Abstract Administrative Monopoly in Foreign Countries Provides a Useful Reference for China

Judicial review of abstract administrative actions is common in legislation and practice in the western countries, which plays an important role for the effective control of executive power and protection of legitimate rights and interests of citizens. We should learn from the successful precedent of foreign legal system development experiences, and establish judicial review systems of abstract administrative actions in accordance with China's national conditions (Zeng, 2005). It is of great significance to improve the litigation system of administrative monopoly in China, and to curb the spread of administrative monopoly. In fact, the laws of developed countries generally do not distinguish specific administrative actions from abstract administrative actions, but incorporate them into the scope of judicial review. Even though China's legislature bases administrative litigation on the dualism of specific administrative actions and abstract administrative actions, the main reason is to consider the special nature of supervision over the abstract administrative actions. However, theoretically these binary division is not clear, and there is a gray area between them, which has been confirmed by the courts' practice (Wang, 2007b).

4. Obstacles to Judicial Review of China's Administrative Monopoly

Under the existing relevant laws, China's current judicial review of specific administrative monopoly should have a more sufficient legal basis; at the same time, lawsuit practice of specific administrative actions has also accumulated some experience for the realization of judicial review of administrative monopoly. But in reality, administrative monopoly is mainly manifested by abstract ad-

ministrative monopoly, and specific administrative monopoly is also often induced by abstract administrative monopoly, while the relevant provisions of judicial review of abstract administrative monopoly are still missing. In other words, the current judicial review of China's administrative monopoly is faced with a number of obstacles. They're as following.

4.1. Overall Quality of China's Judges Still Cannot Fully Meet the Requirements of Trialing Cases of Administrative Monopoly

A high degree of uncertainty in the Anti-monopoly Law makes its operation more difficult than other laws. To apply the Act more effectively, the operation of the Act depends on the Court's judicial activities more than other laws, especially depends on the judge's reasonable judgments. The application of antitrust rules are mainly based on reasonable judgments, which determines the necessity of legal regulation by analyzing market players' behaviors, purposes and consequences, and makes the application of antitrust rules better adaptive to the complex economic situation, also makes anti-trust lawsuit more complex. Meanwhile, extensive use of the economic analysis has also increased the difficulty of antitrust cases for judges. In particular, administrative monopoly cases are more complex, professional and policy-oriented. In the process of hearing administrative monopoly cases, judges, according to the provisions of Article 39 of the Anti-monopoly Law, should judge the administrative subject, administrative behavior and whether the administrative power is abused. In particular, it is necessary to use economic analysis method to determine whether the behavior of administrative subject "causes the restriction and exclusion of market competition". These are great challenges for judges in administrative monopoly cases. Therefore, the review requires judges to have more professional knowledge, business skills, and policy standards.

4.2. Basis for Accepting and Hearing Cases of Administrative Monopoly Is Not Sufficient

China's "Administrative Procedure Law" only regards specific administrative actions as litigation objects, but excludes abstract administrative actions. In China, an administrative monopoly action doesn't often come from a specific result of a specific administrative action taken by the executive authorities at someone or something, but often shows in the form of industry regulations, local regulations, orders and decisions and other documents. These regulations and commands essentially reflect the abstract administrative actions of government agencies, and have a force for citizens, legal persons and other organizations within the scope of the jurisdiction, and general market players are afraid of questioning the legitimacy and effectiveness of these regulations (Zhong, 2005). Under the current laws, on the occasion where the administrative subjects monopolize by means of abstract administrative actions, the relative can only incidentally put forwards disagreement against the basis for the actions in bringing a reconsideration against specific administrative actions, while the court is in a

state of incompetence, which undoubtedly are very negative to relative persons and makes the administrative monopoly implementation sectors more arrogant (Zhang, 2001). While Article 45 in China's "Anti-Monopoly Law" stipulates that the executive agencies and the organizations authorized by laws and regulations to administer public affairs must not abuse administrative power to make provisions of excluding & restricting competition, but Article 61 in the Act also excludes judicial review of administrative monopoly behaviors. Obviously, such provisions are not conducive to the timely effective treatment of administrative monopoly cases, but will result in the further spread of the administrative monopoly.

4.3. Competent Courts, Subject Scope and Review Standards of Administrative Monopoly Cases Are Not Clear

On right of competency, China's current "Administrative Procedure Law" gives specific provisions to the jurisdiction of administrative proceedings, but these provisions are limited to specific administrative actions. The anti-monopoly litigation is often very complex, with the characteristics of strong professional and policy, particularly administrative monopoly cases permeated with a strong administrative and partial abstract, which makes the trial of such cases more complex, and generally grass-roots courts are unable to deal with the cases, so the relevant existing provisions cannot meet the requirements of the administrative monopoly litigation. On the subject of proceedings, China's current "Administrative Procedure Law" and related judicial interpretations explicit the scope of the plaintiff and the defendant of administrative proceedings. Relative to the western developed countries, the plaintiff scope of administrative litigation in China is smaller, which is mainly limited to the relative who has a legal interest in the specific administrative act, without placing the executive authority, the prosecution and certain specific groups or organizations into the scope. On review standards, China's current "Administrative Procedure Law" provides that the court only makes the formal legitimacy review for the specific administrative actions in administrative proceedings, not making rational and legal review for the substance. Nor can the courts make judicial review of abstract administrative actions. And this requirement is not applicable to the Anti-monopoly Law, for a variety of monopolies are not absolutely legal and illegal. Every case must be analyzed in accordance with the principle of reasonableness, which also constitutes ideological barriers for the courts to trial administrative monopoly cases. As a result, these cases have to be dealt with by a higher authority in accordance with the usual practice (Shi, 2007b).

4.4. Legal Responsibility System of Administrative Monopoly Is Imperfect

In China's current laws, legal liability of administrative monopoly are mainly the prohibitive provisions, which require administrative subjects "must not" implement certain actions, and for those subjects that have already committed acts

prohibited by law, they will only be ordered to "make corrections" or the directly responsible managers and other directly responsible person are to be "given administrative sanctions". The superficial provisions are similar to non-existent, and it can hardly be a genuine just sanction. The "Anti-monopoly Law" provides administrative liability, civil and criminal liabilities, and also provides organizational responsibilities and personal responsibilities, which reflects the progress of legislation to some extent, but criminal responsibility is not directly against the monopolistic behaviors themselves, but against the relevant organizations and individuals whom the anti-monopoly law enforcement agencies' review and investigate, as well as the staff in the anti-monopoly law enforcement agencies who have the abuse of power, dereliction of duty, practicing favoritism and disclosure of trade secrets. In addition, the Act also does not involve the issue of civil liability against administrative monopoly. The "Anti-monopoly Law" gives anti-monopoly law enforcement agencies rights to make recommendations for the administrative monopoly, but has no clear specific scope of authority and the procedure for exercising the right. These deficiencies and shortcomings will surely make the legitimate rights and interests of victims in administrative monopoly cases are not fully protected, and it is also difficult to effectively regulate administrative monopoly.

5. Approaches to Achieve Judicial Review of China's Administrative Monopoly

Although judicial review of China's administrative monopoly will be faced with some obstacles, these obstacles can be overcome by legislation, law enforcement and judicial. Specific measures are as follows:

5.1. To Improve Current Laws Further

On the one hand, "Anti-monopoly Law" should directly grant the victims of the administrative monopoly the right to sue. Anti-monopoly legislation in many countries most directly give the victims of monopoly (including administrative monopoly) the right to sue, such as the implementation of American Anti-trust Law is made through lawsuits by the government and the private, while most of lawsuits are brought by private parties. As lawsuit is the last method to seek relief to the victims, China's Anti-monopoly Law may refer to foreign legislation, and give the victims the necessary right to sue, which not only include right to claim civil compensation of economical monopoly, but also include right to appeal to administrative monopoly, to claim administrative compensation and to claim civil compensation in special circumstances, giving full justiciability to administrative monopolies, for it's of great significance for the effective protection of the victim's legal interests. On the other hand, it's necessary to improve the "Administrative Procedure Law". As the "Administrative Procedure Law" doesn't regard abstract administrative actions as litigable objects, making it more difficult to implement the anti-administrative monopoly system in the Anti-monopoly Law. For legal dilemma on the justiciability of administrative mo-

nopoly, "Administrative Procedure Law" should put abstract administrative actions in the review scope of administrative litigation. This will not only meet the need for judicial review of administrative monopoly, but also is in line with the executive legislative trends, in order to match with the antitrust laws to regulate administrative monopolies better. In addition, we must revise the "National Compensation Law", should clearly formulate the scope and distribution mode of loss caused by administrative actions (especially the abstract administrative actions) to the relative and other related issues, and so there is a clear legal basis for the victim to pursue the liability of the administrative agencies.

5.2. To Clarify the Competent Courts in Administrative Monopoly Cases and the Scope of the Cases

At present, the establishment of China's courts is corresponding to the administrative divisions, the relationship between courts and administrative agencies is interdependent. To ensure judicial independence and enable the court to independently and effectively examine the abstract administrative monopoly, it should be under the jurisdiction of the court at the same level of the higher organ of the subject of the abstract administrative monopoly, and stipulate that the courts above the intermediate level have the right to try the abstract administrative monopoly cases, so as to ensure the fairness of the judgment. The jurisdiction of specific administrative monopoly may be dealt with according to the Administrative Procedure Law. It remains to be further explored whether administrative monopoly cases are trialed by the administrative monopoly tribunals or by the administrative tribunals courts. Due to the complex, professional and highly policy-oriented characteristics of administrative monopoly cases, for some cases involved in the identification of the administrative subjects' administrative behaviors, the economic analysis is required to judge them "weather to cause the restrictions and exclusion of market competition". The judge capable of trialing general administrative cases could not do so. Therefore, to obtain an objective, just and reasonable verdict of administrative monopoly cases, the Intermediate People's Court and the Higher People's Court should establish Administrative Monopoly Trial Chamber composed of specialized professionals such as Law and Economics. If such cases are trialed by the administrative tribunal, at least a professional advisory group should be allocated to provide the appropriate economic analysis and expert advice for the judges of such cases to ensure more just and reasonable handling of administrative monopoly cases. In terms of the scope of cases accepted by the court, the court can accept all acts (including abstract administrative acts) that the administrative organs exclude, restrict or hinder the market competition by virtue of their administrative power. The Anti-Monopoly Law amended in 2022 clearly stipulates the specific forms of administrative monopoly implemented by administrative organs and organizations authorized by laws and regulations to have the function of managing public affairs. These provisions cover not only specific administrative monopoly acts, but also abstract administrative monopoly actions, which cover

most forms of administrative monopoly in practice. Therefore, the court' s scope of acceptance of administrative monopoly cases can be directly determined in accordance with these provisions of the Anti-monopoly Law.

5.3. To Clarify the Litigation Subjects of Administrative Monopoly Cases

In different countries, the scope of plaintiffs is also inconsistent. Under Article 7 of the Sherman Act and Article 4 of the Clayton Act of the United States, any person suffering from property or business damage by anti-trust violations can bring antitrust lawsuits. The 7th revised German "Against Restraints of Competition Law" provides that all affected persons are eligible to prosecute. The "affected" here refer to the competitors, as well as other market participants affected by violations. In comparison, Germany provisions are more scientific, and represent the future direction of development. Because in many cases, the property of a private executor is not damaged or difficult to prove damage, but no private litigation may cause a significant loss to their potential interest (Wang, 2003). Therefore, we can learn from Germany and consider the diversity of the legal relationship of administrative monopoly. The plaintiff range of administrative monopoly cases should be defined as: anyone whose interests are affected by monopolistic behavior of the executive authorities has the right to sue, not only including consumers, producers and operators, but also including the executive authorities, the prosecutors, the specific public interest groups and self-government organizations. At present, China's anti-monopoly law enforcement agencies are subordinate to the executive branches, whose independence are questioned deeply. If they are given the right of direct litigation against the administrative monopoly, the effect will be very little. Of course, there is also the possibility that the agency will have the right to sue the administrative monopoly with a high degree of independence in the future. Regarding the question of which administrative monopoly cases these plaintiffs can file respectively, the author believes that the abstract administrative monopoly cases and specific administrative monopoly cases with great significance or influence on competition should be filed by the procuratorate as the representative of the public interest; other specific administrative monopoly cases should be filed by private parties and other relevant subjects.

The defendants should include all levels of local government agencies and government-owned departments (including under the State Council ministries and commissions) except the State Council, and the organizations authorized by the laws and regulations to administer public affairs, because these subjects are likely to become administrative monopoly implementers. In addition, the participators of administrative monopoly not only include the direct implementers of the administrative monopoly and the authorized organization, but include the operators who profit from the administrative monopoly actions, because they both often have a common interest. Objectively, they both jointly implement a complete administrative monopoly through separate actions. Subjectively, both

of them have a common intent to restrict competition and harm interests of other competitors in implementing administrative monopoly (You, 2006). Therefore, in the administrative monopoly cases involved in the liability for the admissibility, the operators benefiting from the administrative litigation cases should be considered as the defendants-based third person (if the number of operators benefiting from the case is large, provisions of the representative proceedings can be applied to determine the action representation) or as the civil defendant in a civil administration or an independent third party. After the court confirmed that the monopolistic behavior is illegal, they both should be decided to bear joint liability, and for the operator benefiting from the case is the most important earner of administrative monopoly, he should mainly carry out financial compensation to the victims (civil compensation in nature), and the executive authorities only bear complementary joint liability (executive compensation in nature).

5.4. To Clear Review Standards of the Courts

With the great expansion of executive power and increasing complexion of social relations, granting a judge moderate powers to determine whether administrative actions are reasonable or not on basis of justice or rationality in order to use the judicial discretion to resist administrative discretion is the key way to obtain social justice (Wang, Zhao, Ren, & Gao, 2004). Especially in anti-monopoly law, the illegal and the legal are often relative, and it can be said that anti-monopoly itself is the problem of rationality, so the review of anti-monopoly cases is mainly the review of rationality. It is only through rational review that the determination of "whether there is exclusion, restriction of competition" can be fair. Of course, the rational review should be limited to the scope of no damage to social and public interests. For administrative monopoly has its own particularity compared with general market monopoly, the criteria of rational review on administrative monopoly by the court should at least include two aspects: First, weather the administrative agencies and authorized organizations by the laws and regulations to administer public affairs abuse administrative power or not, and the criteria of judging its "abuse" should be defined as "whether or not there is the purpose of restricting and excluding competition, and produce practical consequences"; second, whether the normative documents formulated by the administrative agencies and authorized organizations contain the contents that exclude or restrict competition. In general, as long as the normative document by the administrative agencies and the authorized organizations contains the contents of excluding or restricting competition and generates the actual consequences, it belongs to the abstract administrative monopoly of abuse of executive power. But in the current system conditions, due to usual respect for the administrative power, the rational review of the court is inevitably accompanied by the review of the legitimacy. Because administrative monopolies are mostly based on the abstract administrative actions, the specific administrative monopolies are mostly based on abstract administrative actions. Therefore,

the legal review of administrative monopoly is primarily focused on the legal review of abstract administrative actions, including authority review, behavior review and procedure review and so on.

5.5. To Improve the Legal Liability System

To regulate the administrative monopoly effectively, "Anti-Unfair Competition Law" and "Anti-Monopoly Law" have the relevant provisions on administrative responsibilities. However, for administrative monopoly has a very serious social harm, only the provisions of the administrative responsibility in the sense of public law are not sufficient and cannot effectively curb the occurrence of administrative monopoly (Shao, 2004). Therefore, the administrative monopoly "should be subject to criminal penalties". In general, there are four standards to determine whether or not a wrongful action should be subject to criminal penalties. First, the value and extent of benefits undermined by the wrongful action; Second, the damage to the object by the wrongful action; Third, the accountability of the operator in conscience; Fourth, the inevitability of criminal penalties (Lai, 2002). Accordingly, the administrative monopoly infringes on a significant legal interest, that is, free competition mechanism; free competition mechanism is extremely vulnerable to administrative monopoly actions; the subjects engaging in administrative monopoly behaviors have a very obvious malice subjectively, namely through implementing monopolistic actions together with the beneficial operators to restrict competition and damage the interests of other competitors; there exists the inevitability of criminal penalties on administrative monopoly. In fact, anti-monopoly laws in most countries provide criminal liability for administrative monopoly. Such as in the United States, Article 1 and Article 2 of "Sherman Act" provide criminal liability for monopoly or restricting competition actions; Japan's "Anti-monopoly Act" also provides fines and other criminal penalties for monopoly or restricting competition actions. China's "Anti-Monopoly Law" should also provide additional criminal penalties for administrative monopoly actions; Also, the measurement standards and specific forms of criminal responsibility should be clearly defined, taking into account the introduction of "crime of administrative restrictions on competition", or "administrative monopolies crime" in the Criminal Code or Anti-Monopoly Law; criminal liability should directly be aimed at the persons in charge and other direct responsible person, trying not to make administrative subjects bear criminal responsibility. Although China's Anti-monopoly Law has a provision on criminal liability. However, the Act does not explicitly apply criminal liability to administrative monopolistic actions. With regard to administrative monopoly, the Anti-monopoly Law, amended in 2022, only stipulates that the Anti-monopoly Law enforcement agency may interview the legal representative or person in charge of the entity committing the administrative monopoly and require him to propose improvement measures.

Moreover, according to the interests structure of protection in Anti-monopoly

Law and the unique function of civil liability, regulation of administrative monopoly also requires civil liability, which is the most basic liability form (Wang, 2005). Therefore, the provisions concerned with the civil liability of operators in Article 60 of the "Anti-monopoly Law" should apply to administrative monopoly, which may require to be clarified in its implementation rules. In fact, many countries' laws have established the victim's civil compensation system, but some countries adopt the principle of actual damage compensation, while others adopt the principle of punitive damages. For example, Article 7 of "Sherman Act" in the United States provides, "any person or company, engaged in actions prohibited or declared unlawful by its anti-trust laws and suffered from business or property damage, can sue and ask to grant three times the damages they have suffered from, as well as litigation costs and reasonable attorney's fees." Considering that administrative monopoly, in essence, like market monopoly, destroys the order of market competition in order to obtain economic benefits. Therefore, the economic compensation system that determines the beneficiaries of monopoly to compensate the victims is a very direct and effective way of sanctions. The beneficiaries of administrative monopoly may include the administrative organs implementing monopoly actions and the profit-making operators. However, according to the actual situation of China, the principle of actual damage compensation and the sanction of administrative compensation can be applied to the former, and the principle of punitive compensation and civil compensation can be applied to the latter.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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