

Research on the legal attributes and legal control of administrative 'blacklist'

Jilin Zhang

Zhengzhou University, Zhengzhou, Henan, 450000, China

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Abstract: In the face of the continuous complexity of administrative affairs, the administrative 'blacklist' mechanism has emerged, which in turn constitutes a key tool for government departments to perform regulatory duties. The administrative 'blacklist' is based on the establishment of 'bad information records' for offenders, and then published to the outside world, so as to restrain the behavior of relevant responsible persons and their legitimate rights and interests. However, in view of the unclear legal provisions of the administrative 'blacklist' mechanism, there have been excessive expansion and misuse in the implementation of the system, which has seriously damaged its legitimacy and fairness. The purpose of this paper is to make a detailed analysis of the legal characteristics of the administrative 'blacklist' system, study its legal attributes in different occasions, and then put forward the corresponding legal supervision scheme, aiming at providing theoretical basis and practical guidance for the legal construction of the administrative 'blacklist' system.

In modern social governance, administrative 'blacklist' as an innovative means of supervision is widely used in many fields. By publicizing the bad records of illegal enterprises and individuals, we can limit their market access and reveal bad credit, so as to realize the effective protection of social public interests. However, the legal attributes of the administrative 'blacklist' and its legal control have always been the focus of controversy in academia and practice. The purpose of this paper is to deeply explore the legal attributes of administrative 'blacklist', analyze its application status and existing problems in practice, and put forward corresponding legal control suggestions. Through the research of this paper, it is expected to provide useful reference and reference for improving the administrative 'blacklist' system and protecting the legitimate rights and interests of administrative counterparts.

1. The legal attribute of administrative 'blacklist'

As a key management tool, the definition of the legal nature of the administrative 'blacklist' system is related to the compliance and suitability of the mechanism, and it is also directly related to the rights and obligations of the administrative counterpart. With the increasing difficulty of social governance, the administrative 'blacklist' system plays an important role in the implementation process. Therefore, it is extremely necessary to conduct in-depth research on its legal attributes.

1.1 The basic concept and classification of administrative 'blacklist'

Generally speaking, the administrative 'blacklist' refers to the fact that the regulatory agency records and discloses the subjects who fail to comply with specific standards or requirements in accordance with relevant legal provisions, aiming to prompt risks and impose restrictions on the rights of relevant parties. According to different standards, the administrative 'blacklist' can be divided into punitive, warning and filing categories.

Punitive administrative 'blacklist': This negative list directly targets the relevant parties that violate laws and regulations, and achieves the purpose of warning by publishing their bad information and implementing corresponding punishment measures. Its distinctive feature is embodied in the significant specificity, which can directly make the other party's rights and responsibilities change. [1]

Warning administrative 'blacklist': Different from punitive 'blacklist', warning administrative 'blacklist' mainly plays the role of early warning and reminding, and will not immediately punish the relevant responsible persons. It reminds users and traders to be vigilant by publicizing bad information, and avoids any trading activities and cooperation matters with the institutions or individuals in the list, which will damage the reputation of the people included in the list and achieve the warning effect.

Recorded administrative 'blacklist': Recorded administrative 'blacklist' is mainly used within the administrative agency. The data transmission supervision and monitoring between each other is not open to the outside world. It records a number of information and behaviors of the personnel in the blacklist, which is used to refer to the subsequent management process of the management agency or to implement corresponding management behaviors. In view of its privacy, the list of recorded bad records has a limited direct impact on the relevant people affected by administrative measures.

1.2. The legal attribute of the 'blacklist' of punitive administration

1.2.1. Administrative penalty

Punitive administrative 'blacklist' is most similar to administrative punishment measures in terms of legal attributes. Administrative punishment measures are the administrative agencies' punishment and punishment of those involved in violation of administrative law according to the law. Punitive administrative 'blacklist' carries out punishment by means of publicizing bad records at the same time. In fact, it is a specific punishment for violators. Such punishment characteristics are not only limited to the adverse effects on the reputation of violators, but also may include specific consequences such as restricting the scope of their functions and powers and increasing the scope of their responsibilities. Therefore, the punitive administrative 'blacklist' should be completely incorporated into the scope of punishment.

1.2.2. Specific administrative behavior

From certain specific perspectives, the "blacklist" of punitive administration is also in line with its original intention. It is clearly defined as an independent act of government departments against specific parties on specific matters, which can directly lead to changes in the rights of counterparts. The "blacklist" of punitive administration lists and records significant violations and specific violations; it directly triggers the adjustment measures of the rights and obligations of the violators (such as restricting their credit, departure, etc.); and it comes from the activities of government agencies. Therefore, the punitive administrative 'blacklist' has a significant specific administrative behavior.

1.2.3. The combination of information disclosure and credit supervision

The "blacklist" of punitive administration also shows the integration of information transparency and credibility monitoring. Information openness is one of the principles advocated by the cornerstone of contemporary social governance. It requires government agencies to maintain openness and information openness during the performance of their duties. The punitive administrative ' blacklist ' uses the release of the misconduct records of these violators to achieve the exposure and warning effect on the violators. [2] At the same time, this kind of information disclosure is also regarded as one of the important means of integrity supervision. In the context of integrity, the credibility level of private individuals and corporate entities is regarded as a key consideration for their social interaction and business affairs. The punitive administrative ' blacklist ' relies on records to publish the misconduct records of offenders, which weakens its reputation and trust in various related fields, so it is binding.

1.3. The legal attribute of the ' blacklist ' of warning administration

1.3.1. Administrative guidance

The warning administrative ' blacklist ' is similar to administrative guidance measures in terms of attributes. Administrative guidance is defined as the administrative organs within the scope of their functions and powers, to achieve administrative goals, the use of flexible measures such as proposals, reminders to guide the relevant units or individuals to implement action or not to use the power of behavior patterns. The warning administrative ' blacklist ' adopts the means of publishing negative information to send warning notices and reference materials to relevant parties, other business entities and relevant persons, so as to urge them to carefully evaluate the transactions or business activities or other cooperation matters with the business entities or individuals listed on the risk list. Although this practice is not mandatory, it has obvious administrative characteristics and has an impact. It shows the effectiveness of administrative agencies in guiding and regulating the activities of market participants; it also shows the function of the administrative institutions to maintain and supervise the market rules.

1.3.2. The embodiment of soft law governance

The warning administrative ' blacklist ' follows the principle of moderate supervision and is carried out within the supervision mechanism. Moderate and standardized management obviously adopts flexibility, negotiation, cooperation and other ways to achieve the purpose of social management. It emphasizes the flexibility, adjustability and adaptability of legal texts; it highlights that the legal provisions and the actual situation are in line with the public acceptance in the process of law enforcement. As a moderate measure management method, the warning administrative ' blacklist ' alleviates a certain degree of mandatory, instrumental and fixed conflict situation ; and use the clarity and credibility evaluation approach to guide market participants to consciously regulate and self-regulate ; therefore, stable moderate management and long-term results have been achieved.

1.4. The legal attribute of the administrative ' blacklist ' of the record category

As a special classification in the administrative "blacklist" system, the legal attributes of the administrative "blacklist" not only reflect the essential attributes of administration, but also include the possible effects of information disclosure and supervision. From the perspective of administrative management, the filing administrative ' blacklist ' is mainly used for internal

information exchange and regulatory needs of administrative agencies. Its purpose is to improve administrative efficiency and rationally allocate resources. Therefore, some regulatory lists have obvious privacy characteristics and confidentiality, and their legal nature is similar to some administrative act or management method. In spite of this, the ' blacklist ' for the record has not been made public to the public, but this situation may still have some potential impact on the relevant departments. In the internal management or work process, the relevant departments may implement stricter regulatory review on some personnel according to the list of bad records, so as to restrict some of their legitimate rights and interests or increase their responsibilities. [3] This implicit influence urges China to clarify the legal characteristics of the administrative ' blacklist ' of the record category, and not to ignore its possible side effects and potential damage to the rights and interests of the relevant parties. With the development of the digital era, the information processing system used by the administrative agency information system is gradually optimized, and the security risks and privacy maintenance issues of the filing administrative ' blacklist ' are becoming more and more significant. Therefore, when studying its legal characteristics, we must also pay attention to the coordinated operation of relevant laws such as data stability and personal information protection laws, and ensure the safe and formal implementation of the administrative ' blacklist ' on the basis of legality.

2. Legal control of administrative 'blacklist'

2.1. Legal control at the legislative level

2.1.1. Clarify the legal basis

Initially, the establishment of the administrative ' blacklist ' must have a clear and specific legal basis. This requires the legislature to clearly define the applicable objects, guidelines, processes and remedial measures of the administrative ' blacklist ' when promulgating supporting legal provisions, so as to ensure that the administrative agencies have a clear legal basis and detailed operational guidelines in the implementation process. At the same time, the formulation of regulations still needs to pay attention to coordinating the relationship between public interests and individual rights, and prevent the administrative ' blacklist ' from evolving into a tool that infringes on the legitimate rights and interests of citizens.

2.1.2. Refinement system design

The legislature should establish a framework structure and clarify the implementation rules of different administrative ' blacklists ' when formulating relevant laws and regulations on administrative ' blacklists '. For example, for the ' blacklist ' of punitive administration, it is necessary to establish inclusion criteria, punishment measures, announcement period and removal mechanism ; for the warning administrative ' blacklist ', detailed regulations, update cycle and error correction mechanism should be issued. For the administrative ' blacklist ' of the record category, the information exchange boundary, the confidentiality system and the internal monitoring system should be clearly defined, and the optimized design scheme should be used to enhance the execution and clarity of the administrative ' blacklist ' system. [4]

2.1.3. Strengthen legal cohesion

The administrative ' blacklist ' system involves many areas of the rule of law and public management organizations, so the legislature must pay attention to the consistency between the provisions of the regulations when legislating. For example, it is necessary to ensure that the

administrative ' blacklist ' mechanism is closely coordinated with the legal system such as the construction of the integrity system, market supervision and implementation, and legal sanctions; at the same time, we also need to pay attention to the latest developments in international regulations to ensure that our national administrative ' blacklist ' mechanism adapts to international standards and trends.

2.2. Legal control at the law enforcement level

2.2.1. Strictly follow the legal procedures

When implementing the administrative ' blacklist ' system, administrative agencies should strictly follow the requirements of relevant laws and regulations, covering all processes such as initiation of review, data collection, court notice, decision-making implementation, and publication. Government departments should ensure the legality and transparency of the procedures, and ensure the right to know, the right to speak, the right to reply, and the qualifications for help of the relevant parties in an all-round way. For administrative measures that violate the provisions, they should be cancelled or deemed to be inconsistent with the provisions according to the corresponding provisions.

2.2.2. Reasonable exercise of discretion

The administrative ' blacklist ' system provides the scope of management's moderate independent decision-making power to cope with the continuous management needs. However, the process of exercising autonomous power should be reasonable and appropriate, and the legal boundary should not be abused or exceeded. When the relevant departments use the right of self-determination, they must abide by the fundamental principles of balance and fairness, and ensure the compliance requirements and suitability of administrative affairs. At the same time, it is also necessary to improve the framework of evaluation criteria and clarify the implementation criteria and scope of judgment behavior.

2.2.3. Strengthen internal supervision

Government departments should improve the self-restraint system and strengthen the supervision of the implementation process of the administrative ' blacklist ' guidelines, including the establishment of a regular review mechanism, a responsibility tracking system, and an information transparency mechanism. With the good operation of the agency's management system, the bureaucratic behavior of violations can be quickly identified and corrected to ensure the compliance and fairness of the administrative ' blacklist ' mechanism.

2.3. Legal control at the judicial level

2.3.1. Improve the judicial relief way

The administrative ' blacklist ' mechanism is related to the direct rights and interests of individuals who are held accountable for legal responsibilities. Therefore, it is necessary to improve the legal remedy channels, which cover administrative control judicial activities, administrative complaint review and other mechanisms. When there are objections to the content of the ' blacklist ' of administrative affairs management, it has the right to initiate judicial or administrative proceedings in accordance with the law ; the judicial organ or the appellate court shall accept and fairly adjudicate cases in accordance with the law, and safeguard the legitimate rights of the parties

to the administrative unit.

2.3.2. Strengthening judicial review

When the court decides a case involving an administrative ' blacklist ', it should increase the intensity of legal review of government departments, which covers a thorough review of the compliance requirements, suitability considerations, and procedural compliance of administrative activities. In view of the abuse of power by government departments, such as abuse of power, failure to comply with legal procedures and other misconduct, it is necessary to investigate and punish them according to legal requirements; compensation and compensation shall be made in accordance with the law for the violation of the legal rights of the relevant parties, so as to improve the speed of judicial review and ensure the authority of judicial justice. [5]

2.4. Legal control at the supervisory level

2.4.1. Strengthen social supervision

Social supervision is the key link to control the legal constraints of the "blacklist" system. It strengthens the supervision intensity of the administrative "blacklist" mechanism by means of channel publicity and public whistleblowing, which promotes the administrative agencies to implement the law in accordance with laws and regulations. At the same time, it can also improve people's understanding and participation enthusiasm for the administrative ' blacklist ' system.

2.4.2. Improve the supervision of the National People's Congress

The National People's Congress serves as the highest legislative body and has supervisory powers and responsibilities for government departments. The Standing Committee of the National People's Congress needs to improve the supervision effect on the implementation of the administrative "blacklist" system; by listening to official reports, implementing in-depth questions and other methods; master the implementation of the administrative ' blacklist ' mechanism; give effective suggestions for the problems to be dealt with; promote government departments to continuously optimize related work matters.

3. Conclusion

The discussion of the characteristics and legal restrictions of the administrative ' blacklist ' aims at the detailed analysis and thinking of the current administrative work. Through the in-depth analysis of the legal characteristics, the characteristics of various administrative ' blacklists ' and their positions in the legal framework are clarified, which provides a theoretical basis for the legal basis and compliance with the rules. In the future, with the deepening of the development of the legal system and the continuous adjustment of the management system, it is believed that the administrative ' blacklist ' mechanism will gradually become more standardized, clear and fair, and contribute to the construction of a harmonious home and the improvement of national governance efficiency and management efficiency.

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