

INSPECTION OF STATE ADMINISTRATIVE MANAGEMENT DECISIONS UNDER CURRENT LAWS OF VIETNAM

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ABSTRACT:

State administrative management decisions are promulgated by state administrative agencies to govern social management activities. State administrative management decisions play a leading role in the state management. As a result, it is necessary to conduct the inspection on the state administrative management decisions methodically and scientifically in order to ensure the implementation of state administrative management decisions.

Keywords: administrative management, state administrative management decisions, administrative decisions, text check.

1. Introduction

In performing the state's role in social regulation and management, the function of promulgating State administrative decisions is one of the important functions. The improvement of the legal document system in general and the State administrative management decision of the executive system in particular through the document checking mechanism is increasingly important in the process of building the rule of law state and perfecting the legal system to meet the requirements and requirements of management activities in the new situation in Vietnam today. In order to build an effective and reasonable inspection mechanism for State administrative management decisions, it is necessary to study the issues of subjects and subjects competent to inspect and inspect the State administrative decisions.

2. Objects of inspection activities of the State administrative management decision

Examination of the State administrative

decision is an important step in the process of formulating, promulgating and implementing laws in order to ensure the constitutionality, legitimacy and consistency of the legal system. The inspection not only stops at reviewing, evaluating and commenting, but through that, it also has to come up with a plan to help the inspected object complete, in accordance with existing or approved standards and regulations. promulgate. Thus, the examination of state administrative management decisions is the examination, evaluation and conclusion of the constitutionality, legitimacy, and consistency of the State administrative management decisions which are examined and handled. illegal state administrative decisions”.

Objects of inspection activities in practice and state management are diverse, depending on the purpose, nature, scope, and powers of the subject of inspection in practical activities. that determines the object to be or to be examined. In state administrative management activities, competent entities conduct inspection activities with the

objects of inspection activities. Specifically, the objects of the inspection of the State administrative management decision are classified as follows:

(1) Legal documents promulgated by ministers and heads of ministerial-level agencies that are examined and handled include:

- + Circulars promulgated by ministers and heads of ministerial-level agencies; Joint Circulars issued by Ministers, Heads of ministerial-level agencies, with the Chief Justice of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuracy.

- + Documents containing legal normative documents but not being promulgated in the form of legal documents and documents promulgated by agencies not competent to promulgate legal documents are subject to examination. Documents promulgated by ministers or heads of ministerial-level agencies contain legal regulations but are not promulgated in the form of circulars of ministers or heads of ministerial-level agencies, telegrams and other administrative papers promulgated by ministers or heads of ministerial-level agencies containing general rules of conduct; other administrative papers containing legal regulations also issued by these agencies promulgate).

(2) The legal documents of the People's Council and the People's Committee to be examined and handled include:

- + Resolutions of the People's Councils at all levels; decisions of the People's Committees at all levels.

- + Documents containing legal normative documents but not being promulgated in the form of legal documents and documents promulgated by agencies not competent to promulgate legal documents are subject to examination. Documents of the People's Councils and People's Committees at all levels contain legal regulations but are not promulgated in the form of resolutions of the People's Councils or decisions of the People's Committees, notices, and other administrative papers promulgated by the People's Council or the People's Committee containing the general rules of conduct; decisions are made by the Presidents of the People's Committees at all levels and the heads of specialized agencies, issued by the People's

Committees of provinces and districts; official documents and other administrative papers containing legal regulations are also issued by these agencies).

3. Entities competent to inspect State administrative decisions

In the organizational structure and exercise of state power in our country, if the supervision of legal documents in general and the decision of the State administrative management are under the jurisdiction of the legislative body, the inspection of documents in general and The State administrative management decision in particular falls under the jurisdiction of the executive agency. The authority to inspect and inspect State administrative decisions under the executive system is determined on the basis of the 2013 Constitution, the 2015 Law on Organization of Local Governments, revised in 2019 and took effect from July 1, 2021. The competence to examine legal documents in general and specifically the State administrative management decision in particular is determined as follows:

The Government has the authority to inspect the State administrative management decisions of ministries, ministerial-level agencies, People's Councils and People's Committees of provinces. The Ministry of Justice is responsible before the Government for performing the state management of the inspection of State administrative decisions; assisting the Prime Minister in inspecting the State administrative law in particular, and other state management documents in general, in examining documents showing signs of illegality of ministries and ministerial-level agencies.

Ministers and heads of ministerial-level agencies are competent to examine legal documents and State administrative decisions related to branches and fields of state management of ministries and ministerial-level agencies, which are chaired by ministers and heads of ministerial-level agencies, promulgated by the People's Council and Provincial People's Committee.

Provincial People's Committees are responsible for inspecting State administrative decisions issued by People's Councils and District People's Committees. District People's Committees have the

authority to inspect State administrative decisions issued by People's Councils and Commune People's Committees.

In addition to the subjects specified by the Constitution and the law, currently the authority to self-examine the State administrative decision of the Government and the Prime Minister has not been specified in the documents. Government decrees and legal decisions of the Prime Minister are under the supervision of the National Assembly and the National Assembly Standing Committee, while the method of self-examination for this type of document is not really clear. Decree No. 154/ND-CP of the Government issued on December 31, 2020, on amendments and supplements to No. 34/2016/ND-CP dated May 14, 2016 of the Government detailing a number of articles and Measures to implement the Law on Promulgation of Legal Documents in 2015 (amended and supplemented in 2020) also do not stipulate the competence to self-inspect on Government decrees and decisions of the Prime Minister. Therefore, in practical management activities, these two types of administrative decisions are not checked after being issued. In our opinion, the Ministry of Justice is the agency tasked with helping the Government and the Prime Minister inspect the State administrative decisions under the inspection competence of the Government, of the Government or the Prime Minister, it will overcome the signs or contents of such documents with illegal and unreasonable contents and ensure the entire system of State administrative management of the Government and the Prime Minister. The Government to the State administrative management decision of the People's Council and the Commune People's Committee will ensure the uniformity in state administrative management activities in particular, state management activities in general.

In addition, for the purpose of further improving the efficiency of inspection activities, in theory, the Administrative Court should be given the right to check the legitimacy of documents or State administrative decisions in case people exercise their right, initiate lawsuits against the State administrative decision to the administrative court

or during the adjudication process, if it is found that the administrative decision, or administrative act is issued on the basis of legal documents or illegal state administrative decision.

From the inspection of this State administrative decision, we can see that in some countries this inspection is very interested. In traditional countries such as the United Kingdom and the United States, according to the principle that the highest legislative body has the right to amend and cancel documents promulgated by itself and its assigned or authorized agencies; superior state agencies are competent to amend, supplement or cancel documents promulgated by themselves and their competent subordinates. In addition, the Court also has the power to declare a document unconstitutional or illegal. For the French Republic, the 1982 decentralization law stipulates the inspection of legal documents after promulgation and considers this as one of the important tools for the central state agency to inspect and supervise activities, action of local government.

4. Contents of inspection of the State Administrative Decision

Inspection is an activity showing power in state management and state power, clearly showing that the inspecting authority has the right to apply handling measures in accordance with the spirit of the State, of the law and practice of management activities for the State administrative decision. When conducting this activity, the competent authority should pay attention to the legitimacy and rationality of the State administrative decision with the following basic contents:

- *Check the legal basis as a basis for promulgating the State administrative decision:* First, the examiner must consider the legal basis of the inspected State administrative decision, the legal basis for comparison and consideration to determine the content of the administrative decision. the document is contrary to the provisions of law, ie documents with higher legal effect, as well as legal documents on the authority of the subject to issue the document; the legal basis for the authority on the form and the authority to issue the content of the document.

- *Checking the authority to issue the Decision on*

State administrative management: The inspection agency conducts review and assessment of the competence to issue the Decision on the State administrative management including the content, the name of the document to see if it is in accordance with the provisions of the law on promulgation of regulatory documents. breaking the law. Is the content of the Decision on State administrative management consistent with the functions, tasks and powers of the state agency that issued the Decision on State administrative management or such document?

- *Check the legitimacy of the content of the State administrative decision:* on the basis of the law that prescribes the authority for the form and content of the document as prescribed by law, the agency competent to issue the decision on the state administrative management must ensure the content. content in accordance with the Constitution, legal documents of superior state agencies (both vertically and horizontally) and international treaties that Vietnam has signed or recognized. In order to ensure that the document is synchronized, appropriate, not contrary to, or contradicts with other documents in the legal legal document system, it is very important to check the content of the document.

- *Checking the procedures and order for the formulation and issuance of the State administrative management decision:* for the State administrative management decision with legal contents, it is required that the competent state administrative management agencies when conducting the formulation, promulgation, announcement, Publication of documents must comply with the provisions of the Law amending and supplementing a number of articles of the Law on Promulgation of Legal Documents in 2020 and documents detailing the implementation of the Law on Promulgation of Legal Documents.

- *Check whether the State administrative decision is promulgated in the correct format and presentation technique:* The issues of format and presentation technique of the State administrative decision also need to be examined, specifically: the correct presentation of the national title; the name of the agency or organization issuing the document;

numbers, text symbols; place name and date, month and year of issue; the name of the text; text content (conformity with the form of the document, the regulations must be presented clearly and accurately, the language used is easy to understand and common)... For documents belonging to the state secret, in Criteria such as the content presented in the document, or the State Administrative Management Decision, must fully comply with the provisions of law on procedures for determining the confidentiality of state management documents.

- *Checking the conformity of the contents of the State administrative decision with the guidelines, guidelines, and policies of the Party:* When conducting inspection activities, state agencies must consider the contents of the State administrative decision with the guidelines, lines and policies of the Party, and especially must ensure the systematicity and stability and the unity and comprehensive leadership of the Party.

- *Check the suitability of the contents of the State administrative management decision with the reality of state management activities:* The inspecting authority must pay special attention to the adaptability, predictability, and regularity of the movement and development. of management activities, the subjects are governed by the State administrative management decision. Therefore, the content of the State administrative management decision is easy to become outdated and no longer suitable, which is an inevitable part of management activities, which often occurs, so when conducting the inspection, it is necessary to evaluate the conformity of the contents of the State administrative management decision with the actual situation. practice, in order to ensure the feasibility of the document.

- *Check the conformity of the content of the State administrative management decision with other social norms:* In any society, coexisting with the law is always the existence and parallel of social norms. other (ethics, religion, customs, practices, etc.). In order to maximize the positive aspects of other social norms participating in the management process, legal regulations also require adjustment and orientation for existence

and development. in accordance with the Party's viewpoints, guidelines and policies and the laws of the State, therefore, in the process of examining the State administrative decision, legal regulations

also need to be adjusted appropriately to consider the relationship. between legal norms and social norms to facilitate the practical implementation of management activities ■

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KIỂM TRA QUYẾT ĐỊNH QUẢN LÝ HÀNH CHÍNH NHÀ NƯỚC THEO QUY ĐỊNH PHÁP LUẬT CỦA VIỆT NAM HIỆN NAY

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TÓM TẮT:

Quyết định quản lý hành chính Nhà nước là hệ thống văn bản được hình thành trong hoạt động quản lý xã hội của các cơ quan quản lý hành chính nhà nước. Quyết định quản lý hành chính Nhà nước có vai trò chủ đạo và chi phối toàn bộ hoạt động quản lý hành chính nhà nước. Do đó, việc kiểm tra quyết định quản lý hành chính Nhà nước cần phải được tiến hành bài bản, khoa học, để đảm bảo việc ban hành và thực hiện quyết định quản lý hành chính Nhà nước chính xác, hiệu quả.

Từ khóa: quản lý hành chính, quyết định quản lý hành chính nhà nước, quyết định hành chính, kiểm tra văn bản.