



RESEARCH ARTICLE

Research on the Due Process of Faith-Breaking Punishment Mechanism in the Digital Era in China

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ARTICLE INFO

Received: May 25, 2024

Accepted: Jun 27, 2024

KeywordsDigitalEra
Faith-Breaking Punishment
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ABSTRACT

In the digital era, with the government actively boosting technological, intelligent, and automated governance, the due process of the faith-breaking punishment mechanism is confronted with new challenges. Under the construction of a digital government ruled by law, the principle of due process for faith-breaking punishment should adhere to its core from procedural justice, procedural participation, and administrative publicness. First, in terms of procedural justice, the government should ensure that faith-breaking punishment is just, fair, and non-discriminatory and that everyone is treated equally in the process of punishment. Secondly, as to procedural participation, the government should allow parties and stakeholders to participate in the decision-making process to protect their legitimate rights and interests. Finally, in the case of administrative publicness, the government should guarantee that the information and decisions on faith-breaking punishment are transparent and accessible, allowing the public to supervise the government's decision-making process. Only in this way can the principle of due process of faith-breaking punishment realize the transformation from formal equality to substantive equality, from partial participation to full participation, and from relative publicness to overall publicness, maintaining public trust and realizing the legitimacy and justice of governance.

1. INTRODUCTION

With the rapid development of information technology in the digital era, China's administrative process is undergoing profound changes, which are not only the deepening of technology application, but also the systematic transformation of the entirely economic and social development, making survival in the digital era a social norm (Zhang Xinhong, 2021). *The Decision of the Central Committee of the Communist Party of China on Several Major Issues concerning Upholding and Improving the Socialist System with Chinese Characteristics and Promoting the Modernization of the National Governance System and Governance Capacity* adopted by the Fourth Plenary Session of the 19th CPC Central Committee clearly put forward the task of "promoting the construction of digital government" and the request for "establishing and improving the system and rules for the use of the Internet, big data, artificial intelligence and other technological means for administrative management." The continuous development of digital technology has contributed to the evolution of government governance methods (Zhang Jiansheng, 2022). As algorithm-assisted decision-making is

applied in administrative organs on a large scale, the rapid overthrow of the system by digital technology has become a key variable of institutional reform (Su Yu, 2023). In this context, the innovative construction of China's social credit systems is actively being explored. Different from the traditional credit information system, the construction of China's social credit system led by the government aims to establish a credit system of general society and general credit, covering government integrity, business integrity, social integrity, and judicial public trust (Xiao Weizhi, 2021). China's social credit construction focuses on the government's regulation of faith break on the market and social entities, and faith-breaking punishment is the core of social credit construction, that is, the process of the government evaluating, punishing, and standardizing governance objects by collecting, disclosing, and analyzing public credit information through digital technology and public credit information (Dai Hongrui, 2022). For instance, in terms of the credit rating process, algorithm engineers formulate intelligent algorithms that meet the requirements by setting the proportion of different dimensions, and then obtain the user's credit rating results after inputting relevant data. However, despite the rapid development of the faith-breaking punishment mechanism enabled by top-level design and digital technology, the automated and intelligent administrative process raises a series of questions: How to adequately protect the rights and interests of the counterpart and stakeholders in the process? Will individuals be able to present views and argue effectively in the face of machines? How should machines handle human opinions and interpret and give explanations? Do traditional due process concepts and principles work as they are supposed to do in the digital age? In today's China, answering these questions is obviously of epochal and strategic significance.

2. The principle of due process of the faith-breaking punishment mechanism in the digital era

In accordance with theories and systems of modern public laws, the principle of due process plays an irreplaceable role in modern administrative laws. Due process can be divided into two categories of substantive due process and procedural due process. Substantive due process mainly focuses on the protection of civil rights that are not specifically stipulated in the *Constitution*, while procedural due process emphasizes the extraction of some basic due process requirements from the practice of judicial trial (Grossi, 2016). In the administrative law systems of various countries, due process is mostly dominated by procedural due process, whose purpose is to assure the fairness and justice of administrative procedures (Jiang Hongzhen, 2019). Due process is not only a principle, but also represents specific laws. In order to ensure the implementation of due process, the law stipulates a series of procedural requirements, including prior notification, hearing of statements and arguments, and post-interpretation, which play an important role in the system of administrative decision-making as system guarantee, making the administrative procedure fairer and more just, and ensuring that the legitimate rights and interests of the parties are effectively protected.

2.1 Connotations of the principle of due process

The principle of due process is derived from the British "natural justice", which was first stipulated in the *Magna Carta of the Liberties* in 1215 to limit the power of the king and ensure the fairness and legitimacy of the judicial process. With the passage of time, the principle of due process has gradually been accepted and adopted by countries ruled by law, becoming the standard of whether legal procedures are legitimate and just. In the United Kingdom, natural justice is seen as the core of the rule of law, which includes the two basic elements of "no one can be the judge in his own case" and "parties must be given a fair opportunity to hear of their views" (Fang Shirong, Xie Jianyi, 2021).

In the contemporary society ruled by law, the principle of due process is not only the cornerstone of judicial justice, but also the guarantee of the legitimate rights and interests of citizens, legal persons, and other organizations. The principle of due process is embodied in practice as follows: guaranteeing the parties' right of presentation and defense and ensuring the justice of judicial decision. In addition, the principle of due process also involves the transparency of information, that

is, relevant judicial information should be disclosed to the public in a timely manner to promise the publicness and fairness of the judicial process. Although the Chinese *Constitution* does not specifically stipulate due process, the relevant information can be found in Article 2, paragraph 2, and Article 5 of the *Constitution*. Article II, Paragraph B clearly stipulates the right of the people to manage state affairs according to laws, establishing the constitutional basis for citizen participation in administrative procedures, while Article V emphasizes the basic principle of the People's Republic of China ruled by law, providing constitutional support for the construction of a country ruled by law. These two fundamental principles jointly serve as the foundation of a society ruled by law. In practical legal practice, especially in the civil, administrative, and criminal fields, the Chinese government has formulated relevant laws and regulations to implement the principle of due process. In 2004, The State Council issued the *Outline for Comprehensively Promoting Legal Administration*, which clearly stipulates due process as one of the basic requirements for legal administration, requesting that in the process of administrative decision-making and implementation, administrative organs must take appropriate measures to protect the parties' right to know, to make statements, and to plead and to appeal according to laws, so as to ensure the justice, transparency and legitimacy of administrative acts.

2.2 Requirements of the principle of due process

The basic principles of administrative law are the basic norms in the administrative law system, which run through every field of administrative law and guide the formulation and implementation of administrative laws and behaviors of administrative organs (Ying Songnian, 2005). While academic communities haven't reached a consensus on the basic principles of administrative laws, it is certain that the principle of due process is an indispensable fundamental principle regardless of the standard. The core elements of the principle of due process lie in procedural justice, procedural participation, and procedural publicness.

Procedural neutrality

In the administrative law system of modern countries ruled by law, the neutrality of the principle of due process is one of the key elements, which requires administrative agencies to be impartial in the implementation of the law, and to pay equal attention to the claims, evidence, and opinions of all parties (Liu Yuanzhang, Zhang Shubi, 2011; Kanval et al., 2024). The neutrality of due process is not only a kind of "visible justice", but also a guarantee of substantive justice, which is of great significance to maintaining a fair, just, and open legal social environment. In terms of the structure of state power, the administrative power, as the executive power, is responsible for managing and intervening in social activities and private life. However, the motivation, initiative and expansion of administrative power make it easier to abuse, and thus it needs to effectively control administrative power in practice (Sun Xiaoxia, 1999). Modern countries ruled by law learn from the principle of due process and stipulate the procedural rules that administrative organs should follow when executing power through the formulation of administrative procedure law, so as to achieve the regulation and supervision of executive power. In the whole process of administrative decision-making, administrative organs shall not discriminate against parties regardless of race, sex, region, identity, and other factors, and shall guarantee the equal rights of every citizen in administrative decision-making. In the process of handling specific cases, administrative organs shall fully respect the opinions of the parties, and hear of their statements and arguments, so as to ensure that their legitimate rights and interests are fully protected. In administrative decision-making, where technologies such as algorithms and artificial intelligence are used, it is necessary to make sure that the design and application of these technologies are neutral and impartial, making it necessary to establish corresponding technology ethical standards and regulatory mechanisms to keep the fairness and objectivity of technology in administrative decision-making.

Procedural participation

In modern society, the principle of procedural participation is both a theoretical requirement, and an institutional arrangement that embodies citizens' rights and guarantees social justice (Yasuhei Taniguchi, 1996). The nature of procedural participation provides a bridge for the exchange of information between administrative subjects, administrative counterparts, and stakeholders. In the information age, the transparency of information is crucial to the legitimacy and rationality of decision-making. Using the traditional administrative model, citizens and organizations are often in a passive position in the face of administrative power, and it is difficult to express their demands and opinions. In modern countries ruled by law, procedural participation gives citizens and organizations more rights to speak and express, so that the subject qualification and personal dignity of administrative counterparts and stakeholders have been fully respected. In addition, they have more opportunities to actively put forward their own views and defend their own interests in the administrative process. The enhancement of participation rights makes administrative decision-making more democratic and equal, increasing the degree of public satisfaction and trust. The participation of the public can effectively supervise the behavior of the administrative organs, prevent corruption and abuse of power, promote the administrative organs to be more prudent, fully consider the opinions of all parties, reduce the bias of decision-making, and make administrative decision-making more just and reasonable.

Procedural publicness

In today's society, procedural publicness is an administrative principle, and a bridge of social trust. The principle of procedural publicness requires that administrative organs, when executing their functions and powers, must disclose matters related to administrative powers to administrative counterparts and the public, except for some specific cases involving state secrets, personal privacy, and business secrets (Zhang Jiansheng, 2014; Jam et al., 2018). The disclosure of administrative activities makes the operation of the government transparent and defends the public's right to know. In the meantime, the government's administrative decisions, implementation procedures and relevant legal basis will be clear, leaving the work of the government more standardized and fairer. The public who has confidence in the transparent operation of the government will be more willing to support government policies, and such a trust relationship contributes to social harmony and stability. Procedural publicness provides an effective way for the public to monitor the government's actions. In an open and transparent environment, the public, administrative counterparts, and stakeholders can all understand the reasons and processes of government decision-making, which is not only the supervision of the government, but also an opportunity for the public to participate. The public can raise questions and offer suggestions based on disclosed information, and the government can learn more about social needs and public opinions in a timely manner. Such interaction will facilitate the government to better serve the public and promote more scientific and democratic decision-making.

3. Challenges to due process of the faith-breaking punishment system in the digital era

In the case of "He Xrong suing China Railway Corporation", he found that he had been identified by China Railway Corporation as a "defaulter who is banned from taking trains" and the determination was publicized when he planned to travel and bought train tickets on September 12, 2018. The determination was based on the fact that he argued with the station staff in vain and behaved rudely at Hangzhou East Railway Station in August 2018. Thereby, he was ascertained as "disrupting the order of railway station vehicle transport, endangering railway safety, and causing serious social adverse effects". The plaintiff believed that he did not use any improper words or did no improper deeds during the negotiation, and the police clearly identified that there was no illegal behavior in this case. In addition, the China Railway Corporation made the determination without warning in advance, communication on the issue, and explanation afterward. He didn't notice the punishment

decision until he found that he was unable to buy tickets when necessary. He believed such a decision seriously violated his legitimate rights and interests, so he brought the China Railway Corporation to court. It can be seen that in the digital era of administration, the application of technological, intelligent and automated government governance approaches not only improves administrative efficiency, but also impacts the principle of due process, including the discrimination technical vulnerable groups suffer, the boundary of reasonable intervention in administrative procedures it breaks, the functional value of the principle of administrative publicness it ignores, and the impacting reasons of participation procedures it should have.

3.1 Inequality: Unfair treatment and discrimination technologically disadvantaged groups face

The number of Internet users in China has grown sharply, and the Internet penetration rate in society has increased significantly. An increasing number of people enjoy the benefits brought by the construction of digital government in the digital era, and the digital era has brought all-round changes to people's lives. As to public administration, intelligent technology has promoted the continuous integration of administrative activities, the administrative process has become more efficient and transparent, and the center of public administration has changed from the administrative organs of the original service provider to the administrative counterpart of the service recipient (Coglianese, Lehr, 2019). Administrative organs should reduce the time of the public handling affairs and strive to transfer offline government activities to online activities as far as possible, so as to achieve "one network handling." However, it cannot be ignored that at present, there are still a large number of people who cannot enjoy the benefits of digital government, or whose own rights cannot be protected. Thus, the problem of the "digital divide" is still relatively serious. The "14th Five-Year Plan for National Informatization pointed out that China's informatization development level is not balanced. Especially, there is a huge gap between urban and rural informatization development. On the one hand, when pursuing "one network handling", administrative centers ignore the fact that rural areas lack easy access to the Internet, and that elderly groups cannot use the Internet, and that rural people still cannot handle online government affairs with their existing cognition. On the other hand, in terms of digital administration, the direct result of administrative organs' excessive reliance on digital technology is that administrative decisions of administrative organs are made by algorithmic systems, which can describe each person's "digital personality" in continuous use and implant it into the algorithmic systems as a factor that should not be considered. In addition, it will directly affect the accuracy of subsequent administrative actions and cause serious "algorithm discrimination" for technologically disadvantaged groups. Digital transformation has brought unprecedented convenience and efficiency to administrative procedures, while it has also made it more complex to achieve true equality in the process. Due to the varying prevalence of digital technologies, access to information has formed a clear gap between different groups, leading to an emerging problem - "algorithmic discrimination", that is, unfair treatment of different groups in algorithmic decision-making due to information asymmetry (Wang Gui, 2021). The situation seriously erodes the basic principle of administrative fairness and exacerbates inequalities in society.

3.2 Off-site: impact on reason presentation and other participation procedures

The characteristics of digital government are more than intelligent, electronic, networked, and automated, and they are also off-site. For instance, some convenient measures, including the issuance of electronic property certificates and registration certificates in Guangdong Province, and the online payment of speeding fines carried out by the Ministry of Public Security, are transforming the original "person-person interaction" mode of government affairs into a "human-computer interaction" mode of government affairs. In the process of off-site administrative law enforcement, administrative organs adopt electronic and digital means to realize the electronic delivery of the punishment decision from the monitoring of illegal and faith-breaking facts, which not only reduces the time of

handling affairs for the public, but also improves the efficiency of government services. Nevertheless, the process is yet another attack on the principle of due process as the digitization process does not take into account the differences in the ability of different groups to obtain information. Administrative organs assume that all administrative counterparts can obtain punishment information via electronic devices, but they ignore those information-poor groups or information-vulnerable groups, who cannot easily obtain relevant information through electronic devices. How can administrative organs ensure the public's substantive participation in administrative activities? How can you prove that the administrative documents have been delivered and received? The administrative organ makes the decision of administrative punishment directly to the administrative counterpart through off-site law enforcement, which does not defend the right of the administrative counterpart to explain, but also deprives the administrative counterpart of the right to propose a hearing, cutting down on the possibility of orderly dialogue with the administrative counterparts. The kind of off-site law enforcement impairs the value of the principle of administrative participation in the principle of due process, and seriously affects the fairness of the procedure.

3.3 “Algorithm black box”: ignorance of the principle of administrative publicness

Sunlight is the best disinfectant, and all shady things grow in the dark. “Algorithm black box” means that with the development of artificial intelligence algorithms, artificial intelligence algorithms can learn and evolve spontaneously, and the decisions they make are no longer linear and single, but become complicated and confusing, so that people only know superficial causes. The operation process of algorithms often relies on steps, codes and procedures, and results are obtained in the black box of algorithms through calculation, completely avoiding the obligation of administrative organs to exchange and disclose information. At present, this problem has been frequently found in the application of artificial intelligence, algorithms, and other technologies. “In fact, not only for off-site law enforcement, but also in scenarios involving data analysis, artificial intelligence algorithms and other technical applications, there are algorithm black box's problems to varying degrees.” In the digital age, administrative agencies increasingly rely on automated decision-making systems, algorithms, and other mechanisms to achieve the digital transformation of traditional administration. Administrative organs may not disclose the content of algorithms because algorithms and decision-making systems are abstract and incomprehensible, which directly damages the public's right to know. When administrative organs use algorithms and artificial intelligence technologies to carry out administrative decision-making, administrative punishment, and other administrative activities, they should not avoid the content of algorithms in a non-transparent and unexplainable “black box” state. After all, it is not in line with the administrative disclosure requirements in the principle of due process. Moreover, when artificial intelligence makes some transparent but unscientific inferences based on the subject's age, location, ethnicity, political affiliation, etc., the problem of “algorithm discrimination” also emerges one by one. Algorithm transparency is a prerequisite for citizens to seek legal remedies, and if it is not transparent, the public will not be able to doubt it (Elyounes, 2019), which will make it difficult for algorithms executing public power to be constrained.

4. Conceptual innovation of the principle of due process in the digital age

In today's digital age, off-site, intelligent, networked, electronic and automated administrative activities have brought profound changes to traditional administrative procedures. As an important cornerstone of the rule of law to protect citizens' rights and interests, the principle of due process not only stipulates the basic procedural bottom line for administrative acts, but also concerns personal dignity and minimum justice (Wang Xixin, 2002). Over the course of the digital transformation, the principle of due process should take advantage of the “trend” of the construction of the digital government ruled by law, and constantly improve its adaptability and implementation effectiveness, so that it can better serve the people in the new era. Therefore, it is necessary to

maintain and strengthen the value of due process in the digital age to ensure the legitimacy and rationality of administrative decisions through institutional arrangements.

4.1 Principle of Publicness: equal treatment

In the digital age, administrative organs widely adopt algorithm systems for administrative punishment, aiming to achieve “absolute fairness” of the administrative punishment result. However, the excessive reliance on algorithmic systems may conflict with substantive equality in the principle of due process. In the process of digital law enforcement, administrative organs should eliminate the possibility of algorithmic discrimination at the programming stage by introducing the necessary human review processes before punishment decisions are made. Manual review can help eliminate the processing differences of the algorithm system itself and ensure the consistency of processing results, so as to implement the principle of equal treatment and realize procedural justice. In the process of manual review, administrative organs are required to consider the faith-breaking punishment function through institutional arrangements, combine the principle of “combining punishment and education” stipulated in the administrative punishment laws, and pay attention to the education and guidance of administrative counterparts, so as to make administrative counterparts recognize their mistakes, correct their behaviors, and ultimately achieve the stability and good development of social order. The addition of manual review in the faith-breaking punishment can not only avoid the occurrence of algorithm discrimination, but also help the administrative organs more comprehensively consider the particularity of the case, and thus the law enforcement activities are more in line with the requirements of the principle of due process. In this way, algorithmic technology and manual audit are combined to realize procedural justice, ensure the proper execution of administrative penalties, and finally achieve the substantive justice of digital law enforcement. In addition, administrative organs should take into account the differences in information access capabilities among different groups, allow traditional administrative activities to continue to exist (Ma Yanxin, 2020), and provide diversified access to information to adapt to the differences in various information access capabilities in society. In addition to electronic and digital means, traditional written notification, telephone notification and other means should also be preserved and respected. Only on the basis of full respect and protection of the right of information-poor people to access information can we ensure real justice and administrative procedural justice.

4.2 Participation principle: from partial participation to full participation

First of all, participation is a political concept. Politicians view participation as an act, through which ordinary people can also influence the outcome of the political system (Weng Mingjie, 2023). The public can participate in administrative activities through symposium, hearings, demonstration meetings, and online platforms. However, in the context of the construction of digital government, although the innovation and informatization of government management technology enrich ways for the public to obtain public services, public participation tends to be formalized. In the era of digital government, the inherent requirement of process principle should change from partial participation to full participation, so as to ensure the effectiveness of public participation. Administrative organs shall make full use of technical means to promote online hearings, online statements, and arguments, etc., protecting the execution of procedural rights of administrative counterparts. In order to protect the legitimate rights and interests of technologically vulnerable groups, traditional public participation channels should also be retained to ensure the diversity and flexibility of public participation channels, and allow administrative counterparts to choose offline hearings, offline statements, and defense forms to participate in administrative punishment procedures. In terms of the off-site law enforcement models, administrative organs ought to optimize the channels for the participation of administrative counterparts, strengthen the administrative punishment organs to hear of the opinions of administrative counterparts as a necessary procedure, introduce the opinions of administrative counterparts, achieve the balance between public interests and administrative

power, and ensure that public opinions and demands are fully heard of and effectively responded to, realizing the justice, fairness and publicness of the procedure.

4.3 Principle of publicness: from relative publicness to full publicness

In digital administration, administrative organs must understand and adapt to the new context of the times, interact with the public in a more open and transparent way, and guarantee the transparency and publicness of the rules of administrative activities. In terms of faith-breaking punishment, the public should have the right to know what acts are faith-breaking, the source and handling process of faith-breaking information should be transparent to the public, and the public should have the opportunity to complain and defend, ensuring justice and fairness. Therefore, the principle of administrative publicness in the principle of due process needs to change from relative publicness in the past to full publicness now, so as to ensure that the public can supervise the execution of administrative power in the whole process. In order to protect the public's right to know and supervision, administrative organs should disclose key information such as the calculation method and calculation weight of the algorithm system to the public, transform the abstract algorithm language into a language that the public can understand, and realize the transparency and publicness of the algorithm decision. At the same time, the basis and standard for administrative organs to execute faith-breaking punishment in the algorithm system should also be open to the public to ensure the legitimacy and fairness of algorithm decisions. In addition, the faith-breaking behavior should be informed in a timely manner to ensure that the faith-breaking individuals know the details of their faith break and the corresponding punishment measures, which not only conforms to the requirements of legal procedures, respects the rights and interests of individuals, promotes the faith-breaking individuals to better perform their legal responsibilities, better follows relief procedures and protect individual rights. The disclosure of information about faith break is not only to inform the parties, but also to provide reference for the public. The improvement of transparency helps the public to understand the nature and consequences of faith break, form a consensus, and help to shape a good social credit environment.

In the construction of a digital government ruled by law, the transparency and publicness of faith-breaking punishment should be stressed. Administrative organs should learn from advanced experience, and establish a sound information disclosure system, so that the information of faith-breaking individuals is timely and accurately disclosed to the public. Only in this way will the faith-breaking punishment have a legal basis and social support. Social harmony and stability are better promoted.

5. CONCLUSION

In the tide of the digital age, the government has made rapid progress in technological, intelligent, and automated governance, while it has also posed new challenges to the due process of faith-breaking punishment. Under the construction of the digital government ruled by law, due process is not only a procedural provision, but also the cornerstone of the social governance system. In this context, we must adhere to and implement the core essentials of due process from the three aspects of procedural justice, procedural participation, and procedural publicness, so as to provide a more legitimate, just, and equitable legal guarantee for social governance. Only by fulfilling the requirements of due process in accordance with laws and combining digital technology with the rule of law can we build a truly just, legal, and fair social governance system, providing a more solid legal guarantee for social governance, and taking steady steps to promote the modernization of the national governance system and governance capacity.

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