

Study on the Pilot Situation Report System in China's Experimental Legislation Practice

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Abstract: Article 13 of Legislation Law establishes the experimental legislation system of our country. In order to better understand and supervise the pilot experiment, the NPC and its Standing Committee usually require the authorized subjects to make work reports on the pilot experiment in the authorization decision. Different from the "central government to the local government" authorization, the pilot situation reporting system is an important institutional guarantee for the "local government to the central government" to enable the authorization subject to obtain and understand the specific practice and experience of the reform pilot system. At the same time, the pilot situation report system is also the supervision system of the higher subject to the lower subject in each practice link. In the practice of Article 13 of the Legislation Law, the pilot report system does not only include the pilot report system stipulated in the authorization decision, but also include the pilot report system stipulated in the pilot rules and the statutory pilot report system. These three pilot reporting systems together constitute a systematic pilot reporting system from "local to central". However, the three pilot reporting systems are not perfect in practice. There are still problems such as the inconsistent authorization decisions on the obligation of pilot reporting, the incomplete role of statutory pilot reporting, the inconsistent content of the pilot report, and the lack of third-party evaluation.

Keywords: Experimental Legislation, Pilot Situation Report, Interim Report, Final Report, Content Settings, Third Party Evaluation

1. Introduction

How to make "the reform should be carried out in the framework of the rule of law"? In October 2014, the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China pointed out: "We should combine legislation with reform decision-making, and ensure that major reforms are based on the law, and that legislation actively adapts to the needs of reform and social and economic development. If it has proved effective in practice, it should be raised to law in a timely manner. If the practical conditions are not mature and need to be tried first, it should be authorized in accordance with legal procedures. Laws and regulations that do not meet the requirements of reform should be amended and repealed in a timely manner." [1] Therefore, "better combining development and reform

decisions with legislative decisions" is an effective way to properly handle the internal tension between reform and law. In a sense, "the history of China's reform and opening up is a dynamic process of trial and error." [2] It is through "trial and error problem reform" that scientific decision-making based on rational thinking is organically integrated with trial and error practical experience, so as to avoid romanticism and irrationalism of reform.

Based on the above ideas, the National People's Congress established the experimental legislation system through the new Article 13 in the Legislation Law of the People's Republic of China (hereinafter referred to as the Legislation Law) revised in 2015, in order to achieve the coordination between reform and the rule of law. Experimental legislation is "a temporary legislative measure taken under special conditions in response to the general and fundamental national laws." [3] It is "a kind of experimental activity of

institutional governance within the scope permitted by the central government or the boundary of relevant provisions is blurred, to stimulate the enthusiasm and creativity of local governments, to adjust the relationship between the central and local governments and to institutionalize and standardize it". [4] The relevant decision grants the authorized subject the power to adjust the existing laws over a period of time in order to gain practical experience in perfecting the existing laws. China's experimental legislation passes the practice of "experimental law", thus accumulating practical experience to provide or create conditions for the improvement of the existing legal system. Therefore, the evaluation and summary of the specific implementation of the pilot trials is an essential part of the experimental legislation process. The summary of the specific practice and experience of the pilot experiment in the experimental legislative practice stage is realized through the pilot situation reporting system. The pilot situation reporting system is not only a means for the authorized subject to understand the actual situation of the experimental legislative practice stage, but also a way for the authorization subject to supervise the implementation subject.

2. Type of Pilot Situation Report

The authorized subjects and other implementing subjects to report on the implementation of the pilot project stems from the general reporting obligations of Article 3, paragraph 4, of the Constitution of the People's Republic of China (hereinafter referred to as the Constitution) [5]. As a common form of official documents for all kinds of state organs, the report is applicable to all kinds of state organs to report their work to the higher authorities, reflect the situation and reply to inquiries. The pilot situation report in the experimental legislative practice stage belongs to the category of the work report. [6] In practice, the pilot situation reports can be divided into the following three categories:

2.1. Authorization Decision Prescribed Pilot Situation Report

In practice, certain authorization decisions will specify in the decision content that the authorized subject needs to submit a report on the pilot situation to the authorization subject. Such pilot report and the State Council, the Supreme People's Court, the Supreme People's Procuratorate, the local people's governments at or above the county level to make regular, comprehensive annual work report, it is authorized subjects in a pilot trial after a stage or all completed, dedicated to the pilot trial work report to the authorization subject to use.[7] Such pilot situation reports are usually temporary, thematic work reports. According to the specific contents of the authorization decision, some scholars will have four types of pilot situation reporting obligations stipulated in the authorization decision: The first category is to specifically stipulate that the authorized subject shall make an interim report to the authorization subject; The second category is to provide for the final report to the authorization subject before the expiration of the pilot

period; The third category does not specify the reporting obligation, but provides for subsequent measures; The fourth category is the lack of clear reporting obligations and the lack of time limits like the third category. [5] Among them, the interim report is usually applied to the authorization decision of the NPC Standing Committee to grant the authorized subject to formulate creative provisions. In addition, some scholars believe that the pilot report in the deferred authorization can also be regarded as an interim report for the implementation of the specific authorization. The final report is usually applied to the authorization decision of the Standing Committee of the National People's Congress to grant the authorized subject to formulate implementation provisions. As for the final report, the author thinks that although it is the main reference basis for the experimental legislative transformation stage, the law amendment proposal submitted by the authorized subject is a legislative bill, which usually does not completely overlap with the content of the final report. At the same time, since the specific implementation of the final report system is submitted by the authorized subject six months before the expiration of the pilot project according to Article 10 of the Legislation Law, the final report is still in the practical stage of implementing the experimental legislation.

2.2. Pilot Situation Report as Specified by the Test Rules

The test rules that stipulate that the relevant implementation subjects report on the pilot situation are usually the test rules formulated by the authorized subjects. For example, paragraph 2 of Article 31 of the Implementation Measures for the Pilot Reform of the People's Juror System jointly formulated by the Supreme People's Court and the Ministry of Justice stipulates that "Before April 2016, the pilot court and the judicial administrative organ should submit the interim report to the Supreme People's Court and the Ministry of Justice step by level." [8] Part IV (5) of the Overall Plan of the China (Fujian) Pilot Free Trade Zone approved by The State Council stipulates: "Pilot free trade zones should timely summarize the experience and achievements of reform and innovation. The Ministry of Commerce and the People's Government of Fujian Province shall, together with other relevant departments, conduct a comprehensive and special evaluation of the implementation of the pilot policies in the pilot free trade zones, entrust a third party to conduct an independent evaluation when necessary, and report the evaluation results to The State Council." [9] The pilot reporting obligations under the test rules are generally consistent with the pilot reporting obligations of the authorized subject stipulated in the authorization decision.

2.3. Pilot Situation Report as Stipulated by the Law

In addition to the above two types of pilot situation reports, the authorization subject and other implementing subjects in accordance with the provisions of the law should also fulfill the statutory obligations of pilot situation reporting. According to article 92 of the constitution, article 110, the legislative law,

article 10, article 9 of the people's court organization law, article 9 of the people's procuratorate, the people's congress at various levels and government organization law, article 69 and the standing committee of the people's congress at all levels supervision law of chapter 2, the State Council, the people's court, the people's procuratorate and county local governments shall submit to the relevant authorities pilot work report. Therefore, when the test rules formulated by the authorized decision or the authorized subject do not clearly stipulate the obligation of reporting the pilot situation, the authorized subject or other implementation subject should still make a work report on the implementation of the pilot test in accordance with the provisions of the law. However, since the reporting obligation stipulated in the above law is not specifically specific to the experimental legislative practice, the reporting subject may take the form of special work report or include the pilot situation in the regular and comprehensive annual work report.

3. Content Setting of the Pilot Situation Report of the Authorized Subject

At present, the above three types of pilot reports constitute a systematic and level of pilot reports in the experimental legislative practice stage. In these three types of pilot reports, the pilot report made by the authorized subject to the authorization subject is particularly important. As the National People's Congress and its Standing Committee, as the authorization subject, are restricted by the establishment of their institutions, it is difficult for them to directly participate in the summary of various experimental legislative practice experience. Therefore, the authorized subject reporting the pilot situation to the authorization subject in the experimental legislative practice stage becomes the main means for the authorization subject to exercise the supervision power to understand and control the specific practice of the experimental legislative practice stage, and is the main basis for the authorization subject to decide the next development of the reform experiment. At present, the content settings in the interim reports and final reports made by the authorized subject are presented as follows:

3.1. Content Setting in the Interim Report

In the authorization decision formulated by the NPC Standing Committee in the past two years, the interim report of the authorized subject was widely applied. Before this, the authorization subject usually clearly defined the interim reporting obligation of the authorized subject in the authorization decision with creative test rules.

The authorized subject usually has three or four main items in the interim report. For example, the Interim Report of the Supreme People's Court on the Establishment of the pilot Reform by the People's Jurors set up three contents: "the development and preliminary results of the pilot work", "the problems and difficulties faced by the pilot work", and "the measures and suggestions to further promote the pilot work".

[10] In the "interim report of the Supreme People's Court on the pilot reform of separating complicated and Simple Civil Speed Procedures", the "pilot work" and the situation of the "phased results of the pilot work" are divided separately to form four parts. [11].

3.2. Contents Setting in the Final Report

The final report is the final summary of the specific pilot situation in the experimental legislative practice stage, so its content must meet the requirements of comprehensiveness, objectivity and accuracy. Take three final reports as an example, their main content is set as follows: First, The Report of The State Council on <The Decision> Implementation of the Standing Committee of the National People's Congress on Authorizing The State Council to temporarily adjust some Legal Administrative Examination and Approval in Guangdong Province contains "pilot work", "main results and existing problems" and "relevant work suggestions", A total of three main contents [12]; second, The standing committee of the State Council about <the authorization of the National People's Congress of the State Council in some places to carry out the drug marketing authorization holder system pilot and the decision> the implementation of the report set in the "specific work", "pilot results", "pilot formation of institutional experience", "problems found in the process of pilot" and "need to explain the two problems", A total of five main contents [13]; third, The Report of the Supreme People's Court on the Pilot Reform of the People's Juror System includes "basic information and main results of the pilot reform", "key and difficult issues involved in the pilot reform" and "the next work arrangement", A total of three contents. [14].

As can be seen from the above, the interim reports and the final reports have a high degree of similarity in the setting of the specific content.

4. Reflection on the Pilot Situation Report System

The pilot situation report is not only the obligation of the implementation subject, but also the means for the authorization subject to supervise the implementation of the authorization decision. The pilot situation report is not only a formal report, but also a substantive report with quality requirements. The content of the pilot situation report must objectively, accurately and completely present the pilot effect to the authorization subject, so that it can accurately and comprehensively understand the actual situation of the experimental legislative practice stage, and ensure the rationality of its follow-up actions. [5].

4.1. The Authorization Decision Shall be Unified in Setting the Obligation of Reporting the Pilot Situation

At present, the authorization decision is not unified for the pilot situation report obligation that the authorized subject should be fulfilled. As mentioned above, the prescribed form

of the pilot situation reporting obligations in the authorization decision includes four categories. The author believes that the NPC and its Standing People's Congress should clearly stipulate the obligation of reporting the pilot situation of authorization subject in the subsequent practice process. Compared with the pilot reporting obligations of category III and IV, the pilot report made by the authorization subject in the interim report or the final report is conducive to clarifying the form of the pilot report made by the authorization subject and other implementation subjects. At the same time, the pilot situation reports in the form of interim report or final report are more likely to be inquired by the public, which is more in line with the requirements of the principle of information disclosure, and is conducive to the realization of democratic supervision. In addition, the NPC and its Standing Committee should also unify the application scenarios of the interim reports and final reports. In several recent authorization decisions of the NPC Standing Committee granting the authorized subject to formulate the implementation provisions, there are provisions that the authorized subject should make an interim report to the NPC Standing Committee. For example, the Decision on Authorizing The State Council to temporarily adjust and apply relevant Laws in Pilot Free Trade Areas (2021) [15]. Therefore, the form of authorization decision is not a decisive factor in the adoption of an interim or final report. Therefore, when formulating the authorization decisions, the NPC and its Standing Committee should reasonably set up the applicable form of a report on the pilot situation according to the specific authorization matters of the authorization decision and the period of the authorization decision.

4.2. Improve the Review System for Reporting Reports on Pilot Projects

The pilot situation reporting system is not only limited to the obligation provisions of the authorization subject to the authorized subject in the authorization decision. The pilot situation report system should be a systematic and complete special work report system. The undertaking of the pilot reporting obligation is not limited to the authorized subject, and other public power implement may also need to undertake certain pilot reporting obligations in accordance with the provisions of the law or the authorized subject test rules. For the pilot situation report system of the authorized subject and other public power implementation subject, the author believes that:

(1) Clarify the review system for the pilot report when the NPC is the authorization subject

The pilot situation report collected and summarized by the authorized subject according to the requirements of the authorization decision shall belong to the special work report made by the authorized subject. In accordance with the principle of "who authorizes supervises", the pilot situation report shall be handed over to the authorization subject for deliberation. At present, in accordance with the Supervision Law of the Standing Committees of People's congresses at all levels and the Rules of Procedure of the NPC Standing Committee on the deliberation of special work reports, the

NPC Standing Committee can find clear legal provisions on the deliberation procedures of the pilot reports. However, Article 33 of the Rules of Procedure of the NPC only provides for the relevant system for the NPC to hear work reports. Pilot situation report as a special work report certainly belongs to the category of the work report. But according to the provisions of this article, whether the authorized subject should report the pilot situation separately in the form of a special work report, or should it be combined with the annual work report? It will not fully and accurately include the pilot situation due to the space limit of the annual work report? Although the NPC has not made an authorized decision in accordance with Article 13 of the Legislation Law, Article 13 of the Legislation Law gives the NPC corresponding powers, leaving room for the NPC to exercise relevant powers. Therefore, the author believes that it is necessary to clarify the operation mechanism of the relevant report system when the NPC makes the relevant authorization decision.

(2) Improve the review system for the standing committees of local people's congresses' reports on the pilot projects

Is the pilot reporting obligation of the local authorized subject only limited to the provisions of the authorized subject in its test rules? According to the provisions of article 8 of the supervision law, the standing committee of the people's congress at all levels can "choose several relationship between the reform, development and stability and the vital interests and major issues of social concern, planned arrangements to listen to and review the people's government at the corresponding level, the people's court and the people's procuratorate special work report." However, the first paragraph of Article 9 of the Law does not specify the pilot reform as the special work report. The second paragraph only stipulates that "the people's governments, people's courts and people's procuratorates may request the standing committee of the people's congress at the corresponding level to report the special work." Because the provisions used expression only for "can" "such arbitrary expression rather than" shall "such mandatory expression, as the authorized decision implementation subject of the local people's government, the people's court and the people's procuratorate in the specific implementation of an authorization decision, shall have the right to decide whether to the local people's congress standing committee at the corresponding level for pilot special work report.

In this regard, the author believes that the obligation of reporting on the pilot situation of the local implementation subject should not be limited to the requirements of the test rules of the authorized subject. The local state organs at all levels that specifically participate in the implementation of the authorized decision should also take the initiative to make a special report on the pilot situation to the standing committee of the people's congress at the corresponding level in accordance with the legal procedures. First of all, the legislative purpose of Article 13 of the Legislation Law itself is to comprehensively deepen the reform under the premise of comprehensively realizing the comprehensive rule of law, which belongs to the scope of major reform matters and

within the scope of the standing committees of local people's congresses at all levels to hear and deliberate the special work reports of other local state organs. Secondly, adding Article 13 of the revision process of the Legislation Law in 2015 has solved the problem that "major reforms are based on the law", but it has also objectively created "special zones for law implementation". For such practice, which breaks through the requirements of the unity of the rule of law to some extent, it is even more important to strengthen the supervision of people's congresses at all levels and their standing committees over relevant practices. Finally, compared with the NPC People's Congress and its standing committees, local people's congresses at all levels can more easily and directly supervise the specific implementation of authorization decisions. Most of the special work reports on the "final version" pilot reports made by the authorized subject to the authorization subject directly rely on the "preliminary version" pilot reports made by the local implementation subjects, and the quality of the "preliminary version" pilot report needs the supervision of the standing committees of local people's congresses at all levels.

(3) Improve the content setting of the pilot situation report and introduce a third-party evaluation system

At present, the authorized subject to make the pilot situation report, although including the "pilot development situation" and "the pilot work stage results" and other aspects of the content. However, the relevant content usually only includes the comparison between the pilot areas before and after the pilot, and lacks the comparison between the pilot areas and the non-pilot areas. This makes the comprehensiveness and objectivity of the pilot situation report greatly reduced. The content setting of the existing pilot situation report cannot completely exclude the impact of other objective factors on the actual implementation effect of temporarily adjusting or temporarily stopping the application of relevant legal provisions. At the same time, the authorized subject to make the pilot report is often a summary of the pilot report and is limited by the review process of the report, and the length of the pilot report is generally limited. In some experimental legislative practices, the number of words after the authorized subject makes the pilot report is even slightly more than that after the authorized decision to remove the title. The author believes that it is not enough for the authorization subject to understand the actual situation of the pilot experiment and control the development direction of the pilot experiment. It is difficult to imagine that such a pilot situation report can fully and accurately enable the authorization subject to fully and accurately understand the actual situation of the pilot test.

In addition, it is not enough for the authorization subject to understand and judge the pilot situation in the experimental legislative practice stage to rely only on the summary pilot situation report made by the authorized subject. The pilot situation report made by the authorized subject often depends on the pilot situation report made by other implementation subjects within the state organ system, which belongs to the self-evaluation of the pilot situation. This kind of

self-evaluation is difficult to guarantee its objectivity, so that the relevant experimental legislation becomes "going through the motions" and becomes the authorization to temporarily give the "privilege" to some places. Therefore, in the experimental legislative practice stage, it is necessary for the authorization subjects to introduce a relatively independent third party to investigate and investigate the specific implementation of the pilot area to improve the objectivity and accuracy of the relevant reports.

References

- [1] Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting Law-based Governance of the Country [N]. People's Daily, 2014-10-29 (1).
- [2] Xu Zhenwei. "Trial and error regulations" and China's trial and error reform [J]. Journal of Tianjin Administrative College, 2021, 23 (5): 23-31.
- [3] Jiang Guohua, Guo Wentao. An empirical analysis of the authorization decisions of the Standing Committee of the National People's Congress -- Taking 21 authorization decisions made by the Standing Committee of the 12th National People's Congress as samples [J]. Journal of South-Central University for Nationalities (Humanities and Social Sciences Edition), 2019, 39 (5): 154-161.
- [4] Zheng Zhihang. Ideal Type and Practice Reflection of Local Rule of Law Experiment in China at present [J]. Journal of National Procurators College, 2021, 29 (1): 113-127.
- [5] Wang Jianxue, The Decision on Authorizing the Local Pilot Reform should Follow the Principles of Proportionality [J]. Listed in Law, No. 5, 2017, pp. 39-49.
- [6] Yu Chengkun. The Classification of Administrative Document Types [J]. Applied Writing, 2001 (01): 5-7.
- [7] Chen Tianen, The Eight types of Official Documents: A Report, published in News and Writing, No. 10, 2006, pp. 46-47.
- [8] Chen Qihua, Research on the Incentive Mechanism of People's Jurors -- Also on the Implementation Measures for the Pilot Work of People's Juror System Reform [J]. Research on the Rule of Law of Property Rights, 2017, 3 (02): 171-183.
- [9] Notice of the State Council on Printing and Distributing the Overall Plan of China (Fujian) Pilot Free Trade Zone [J]. Bulletin of the State Council of the People's Republic of China, 2015 (13): 24-33.
- [10] Li Yi, The Predicament and Way out of the Reform of the Separation of Factual Trial and Legal Trial of the People's Jury System -- Taking the Interim Report of the Supreme People's Court on the Pilot Reform of the People's Juror System as the research object [C]// Proceedings of the 2016 Annual Conference of the Research Society of Procedural Law of Hubei Law Society. 2016: 108-116.
- [11] Zhou Qiang, Interim Report of the Supreme People's Court on the Pilot Reform of Diversion of Complicated and Simplified Civil Procedure at the 26th Meeting of the Standing Committee of the 13th National People's Congress on February 27, 2021 [J]. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2021 (03): 632-637.

- [12] Report of the State Council on the Implementation of the Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Administrative Examination and Approval of Some Legal Provisions in Guangdong Province [J]. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2016 (01): 87-89.
- [13] Report of the State Council on the Implementation of the Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Carry out Pilot Drug Marketing License Holder System and Related Issues in Some Places - at the 6th Meeting of the Standing Committee of the 13th National People's Congress on October 22, 2018 [J]. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2018 (06): 935-940.
- [14] Report of the Supreme People's Court on the Pilot Reform of the People's Juror System -- At the Second Meeting of the Standing Committee of the 13th National People's Congress on April 25, 2018 [J]. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2018 (03): 468-472.
- [15] Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Application of Relevant Laws and Regulations in Pilot Free Trade Zones [J]. Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China, 2021 (04): 866.