

Abstract

The purpose of this study is to explore and extrapolate a more precise definition of the Principle of Reliance Protection, in order to review the adequacy of the practical Civil Service Protection Cases with the Principle of Reliance Protection applied; and provide The Civil Service Protection and Training Commission (CSPTC) specific and concise suggestions for use of this Principle.

After reviewing related decisions made by the CSPTC, we noticed that the CSPTC applied the Principle of Reliance Protection to Civil Service Protection Cases under two main circumstances – the Laws and Regulations have been modified and the beneficial administrative sanction has been revoked by the administrative agency. However, the Principle of Reliance Protection has different forms of ideology based on these two situations, which should not be confused with each other.

To assert the Principle of Reliance Protection under the situation that the Laws and Regulations have been modified, even though Justices of the Constitutional Court, Judicial Yuan, released several Interpretations to deal with this issue, there is still no clear and definite direction of solutions. The specific suggestion from this study is that if the modification involves the abridgement of Constitutional Rights, this modification should be reviewed to see whether it violates the Principle of Proportionality, and considering the factor of time-change under the review frame of the Principle of Proportionality. If the modification involves rights other than Constitutional Rights, the Principle of Non-retroactivity should be used as the review model.

In regard to asserting the Principle of Reliance Protection under the situation that the beneficial administrative sanction has been revoked by the administrative agency; because the Administrative Procedure Act already includes the relevant provisions for repeal of the beneficial administrative sanction, the justification should conform to those relevant provisions. After accurately understanding the relevant provisions, weighing the change of legal order and the regression of the legal status for public demand, and the people rely on the protection of the beneficial administrative sanction; the relevant provisions should be applied precisely and adequately.

Furthermore, in Taiwan the Constitution and administrative sanction related regulations in Administrative Procedure Act, are deeply influenced by German jurisprudence; therefore the comparison of foreign laws in this study will mainly focus on German jurisprudence.