推进合宪性审查对维护宪法权威起到重要作用

（2021年10月18日《中国日报》头版见报转4版）

中国日报记者：曹音

近年来，中国切实加强了包括行政法规和司法解释在内的规范性文件合宪性审查，以确保其内容同宪法规定相符合。

此举为贯彻落实习近平法治思想关于维护宪法这一基本大法的权威的要求起到了重要作用。

2017年，党的十九大召开，中共中央总书记、国家主席、中央军委主席习近平代表第十八届中央委员会向大会作报告。报告提出，要加强宪法实施和监督，推进合宪性审查工作，维护宪法权威。

2020年11月，中央全面依法治国工作会议召开。习近平总书记强调，要坚定不移地走中国特色社会主义法治道路，为全面建设社会主义现代化国家提供有力法治保障。他提出，要坚持依宪治国、依宪执政，全国各族人民、一切国家机关和武装力量、各政党和各社会团体、各企业事业组织，都负有维护宪法尊严、保证宪法实施的职责。

在党中央的坚强领导和明确要求下，中国合宪性审查工作按下“快进键”。

2019年12月，全国人大常委会审议通过了《法规、司法解释备案审查工作办法》（以下简称《办法》），进一步明确了备案审查范围和审查职责，规定不合宪的规范性文件，应当予以修改或废止。

根据《办法》，全国人大常委会法工委在备案审查工作中加大了对规范性文件合宪性审查的力度，并将此内容通过《2020年备案审查工作情况报告》向全国人大常委会予以说明。

自2017年起，全国人大常委会开始听取备案审查工作报告，但有关合宪性、涉宪性的内容在2020年报告公开前鲜少披露。

这次“披露”在全国人大常委会法工委法规备案审查室主任梁鹰看来，是近年来合宪性审查工作的“突破”。“以往很少直接、正面地对合宪性审查的内容予以强调。”他说。

梁鹰表示，这次“突破”有助于贯彻落实坚持依宪治国，也将对推进宪法实施监督、维护宪法权威、深化全面依法治国起到重要作用。

2021年1月全国人大常委会听取的《2020年备案审查工作情况报告》对合宪性、涉宪行问题进行了重点关注，同时还披露了3件公民提出的合宪性审查建议及其办理情况。

其中一件来自安徽宣城居民方诗敏。2018年2月，方诗敏给全国人大常委会法工委写了一封信，整整7页A4纸，内容与最高人民法院的一件司法解释有关。

方诗敏在信中指出，最高法在司法解释中确立的人身损害赔偿计算标准区别对待城镇居民和农村居民。这在方诗敏看来，意味着“同命不同价”。“这与宪法有关精神不一致，也不符合民法总则规定的平等、公平原则，建议对该司法解释进行合宪性审查。”他在信中写道。

收到信后，法工委备案审查室先后征求最高人民法院、法工委民法室意见。经审查研究，法工委建议最高人民法院适时完善相关制度，并及时向方诗敏反馈了审查研究结果。

2019年9月，最高人民法院已授权各省、自治区、直辖市高级人民法院、新疆生产建设兵团分院开展统一城乡人身损害赔偿试点工作。虽然目前该试点工作仍在进行中，最高人民法院表示，将尽快对此司法解释作出修改。

“在法规、司法解释备案审查过程中，对合宪性、涉宪性问题作出研究处理是备案审查工作的常规内容，但确实没有在此前的工作报告中特别强调。”梁鹰说。他指出，随着国家对合宪性审查逐步重视，以及公民法律意识的不断提升，这些年相关工作显现实质性进展。

据全国人大常委会法工委数据显示，2020年全国人大常委会共收到公民、组织提出的审查建议5146件。其中，社会各界提出的合宪性审查建议多达百余件。

“这不是个小数目，是以往没有过的。”梁鹰说。

**砥砺前行**

中国法学会宪法学研究会副会长秦前红对合宪性审查工作持续关注。在他看来，这些年全国人大常委会在维护宪法权威、坚持依宪治国方面已取得长足进步。

“全国人大常委会不断激活宪法潜能，让宪法成为百姓看得见、摸得着的国家根本大法。”同时也在武汉大学法学院任教的秦前红补充说道。

他为全国人大常委会开始听取合宪性审查工作情况的举措“点赞”，认为这是向公众表明要维护宪法尊严和权威的具体表现。

2018年3月，全国人大宪法和法律委员会成立。同年，全国人大常委会法工委增设宪法室，加强对宪法法律的研究。

在秦前红看来，这意味着我国有了回应涉宪问题、保证宪法得到切实遵守和执行的专门机构，是推进依宪治国工作的一大进步。

在加强合宪性审查的同时，全国人大宪法和法律委员会也在审议有关法律草案时，对涉宪性问题进行研究，已确认其符合宪法规定、原则和精神。

比如，在《关于推迟召开第十三届全国人民代表大会第三次会议的决定（草案）》的说明中，就明确：根据当前疫情形势和防控工作需要，适时推迟全国人民代表大会会议举行时间，符合宪法原则和精神。

秦前红说：“这就是说，捍卫宪法权威贯穿了国家最高立法机关的整个立法过程。”

此外，国家工作人员就职时需向宪法宣誓，每年12月4日也被确定为国家宪法日。

党的十九届四中全会也明确提出，加强宪法实施和监督，落实宪法解释程序机制，推进合宪性审查工作。

**继续深耕**

梁鹰告诉记者，尽管合宪性审查工作在这些年取得了进步，但有关合宪性审查的理论研究工作还需要继续深耕。“各方面、各地方在制定法规规章中遇到涉及宪法问题的情形，要及时向全国人大常委会提出。全国人大常委会也会在必要时对宪法有关规定作出解释。”他说。

梁鹰指出，全国人大法工委高度重视合宪性审查的理论研究工作。围绕构建中国特色社会主义备案审查理论体系框架，法工委推动北京航空航天大学依托法学院建立了备案审查制度研究中心，还支持浙江大学法学院开展了备案审查专题课程。

“下一步，我们将继续加强合宪性审查和备案审查理论研究，鼓励更多专家专注于此类研究，并建立备案审查专家委员会，促进理论与实践相结合。”梁鹰补充说道。（完）

英文原文

|  |
| --- |
| **Reviews of rules help safeguard authority of Constitution** CAO YIN |

 In recent years, China has intensified the review of normative documents, including administrative regulations and judicial interpretations, to ensure they do not contradict the Constitution.
  The effort has played a major role in effectively implementing Xi Jinping Thought on the Rule of Law in further upholding the authority of the Constitution, the fundamental law.
  At the 19th National Congress of the Communist Party of China in 2017, President Xi Jinping, who is also general secretary of the CPC Central Committee and chairman of the Central Military Commission, called for stronger oversight to ensure compliance with the Constitution, requiring intensified reviews of it to safeguard its authority.
  In a central conference on work related to overall law-based governance last November, Xi stressed that in order to promote the modernization of China's governance system and capacity along the path of the rule of law, it is necessary to require every entity, including government agencies, Party organs, social organizations and enterprises, to shoulder the responsibility of maintaining the dignity of the Constitution and ensuring its implementation.
  Under the central leadership's requirement, the country has accelerated efforts to strengthen reviews to determine whether normative documents conflict with the Constitution.
  In December 2019, the Standing Committee of the National People's Congress, the country's top legislature, adopted a guideline that specified what normative documents need to be reviewed and that those items that are inconsistent with the Constitution should be corrected or removed.
  The committee's Legislative Affairs Commission has been required to include the reviews in their annual regulation filings and work report to the NPC Standing Committee, which means that the reviews have been further regulated and that the work the commission is doing to implement the fundamental law has also been made public.
  The commission has made this report every year since 2017, but items that contradicted the Constitution were not clearly listed in the report before 2020.
  "The 2020 report to the NPC Standing Committee made a breakthrough in terms of reviews concerning the Constitution," said Liang Ying, an official of the Legislative Affairs Commission. "Previously, our work related to the Constitution was rarely shown to the public in such a straightforward manner.
  "The breakthrough will help the nation adhere to Constitution-based governance, as required by President Xi, and it will also contribute to implementing the Constitution, upholding its authority and deeply advancing the rule of law nationwide," he said.
  A report submitted to the NPC Standing Committee in January highlighted scrutiny involving the Constitution and discussed three cases in which people questioned laws, regulations or documents that they believe conflicted with the Constitution.
  One of the cases involved Fang Shimin, a resident of Xuancheng, Anhui province. He wrote a seven-page letter to the commission in February 2018, complaining that a judicial interpretation appeared to conflict with the Constitution.
  According to Fang, the compensation standard for personal damages to rural residents in incidents such as traffic accidents or plane crashes in the interpretation－which was issued by the Supreme People's Court, the nation's top court－differed from that for urban residents.
  To Fang, the difference meant the life of a rural resident was not equal to the lives of urban residents. "It's unfair, and it's inconsistent with the spirit of the Constitution and the principle of the General Provisions of Civil Code," he said and suggested the commission review the interpretation.
  After reading the letter, Liang's office solicited opinions from the top court and the commission's civil division. Then it asked the court to correct or improve the interpretation at an appropriate time and share the process of the case's handling with Fang. In response, the court asked local courts to work on unifying the standard in September 2019. Although that work continues, the top court said it will improve the interpretation as quickly as possible.
  "Ensuring that normative documents are consistent with the Constitution has always been a key criterion in our work, although it was not clearly mentioned in our work reports before," Liang said, adding that efforts to cast more light on the process can be attributed to the closer attention paid by the central leadership and also the increasing awareness of the public.
  According to Legislative Affairs Commission statistics, the NPC Standing Committee received 5,146 review suggestions from individuals and organizations last year. From these, the public put forward more than 100 suggestions on whether related documents were consistent with the Constitution.
  "It was a large number, which we hadn't seen before," Liang said.
  **More efforts urged**
  Qin Qianhong, deputy head of the Association of Constitutional Law with the China Law Society, has been following the review of normative documents made by the NPC Standing Committee in recent years. He said the top legislature has greatly contributed to the nation's adherence to Constitution-based governance.
  "It brought the fundamental law closer to the people and has made it more influential in every aspect of their lives," said Qin, who is also a professor at Wuhan University in Hubei province who specializes in the Constitution.
  He welcomed the report on the review, regarding it as a way to publicly uphold the dignity of the Constitution and help more people understand the law.
  The NPC established the Constitution and Law Committee in March 2018. Later that year, the committee set up an office devoted to the study of the Constitution.
  "Since then, our country has had a specialized department to focus on the Constitution and respond to relevant issues of the law," Qin said. "Its establishment showed significant progress in the adherence to Constitution-based governance nationwide."
  While strengthening the review of normative documents to ensure they do not contradict the Constitution, the committee has also intensified similar scrutiny over the drafting or amending of laws as well as in the issuance of legal decisions.
  A draft decision on the opening date of the NPC's full session in 2020 was submitted for deliberation to the NPC Standing Committee in February last year. It explained that the annual meeting was postponed to ensure epidemic control and prevention and clarified that the decision was made in line with the Constitution.
  "That is to say, adherence to Constitution-based governance and respect for the rule of law were carried out throughout the top legislature's work," Qin said.
  Furthermore, government officials have been ordered to take an oath to the Constitution before they are sworn in, and China has also named Dec 4 as its annual Constitution Day.
  In 2019, the central leadership called for effective implementation and supervision of the Constitution at the Fourth Plenary Session of the 19th CPC Central Committee, saying that the procedure of interpreting the Constitution should be implemented and the reviews on whether normative documents are consistent with the fundamental law also need to be promoted.
  **Research on issues**
  While document reviews have been strengthened over the past few years, "we have also been conducting more research on issues related to the Constitution", Liang said. "Problems involving the Constitution in drafting documents or making decisions should be notified to NPC Standing Committee in a timely manner, and the top legislature should interpret the law or relevant content in the law if necessary."
  According to Liang, the commission has always attached importance to academic studies related to the Constitution. It helped Beihang University establish a research center for improving the system of normative document reviews and supported Zhejiang University in launching specialized courses on the subject.
  "Next, we'll further increase theoretical research on reviews involving the Constitution. We'll urge more experts to focus on the issues, and we'll build a review-related database to strengthen the combination of the theory and practice," he said.