

Challenges and Countermeasures of Theoretical Research on Administrative Behavior in China under the Background of Codification of Administrative Law

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Abstract: No matter whether substantive law or procedural law is used as the approach to compile administrative law code, it is inseparable from the standardization of administrative behavior. Due to the imperfection of China's administrative procedure law, the orderly operation of administrative acts is affected, and the degree of administrative justice is also reduced, which fundamentally hinders the realization of administrative rule of law. The author believes that it may be an ideal choice to discuss the meaning of administrative behavior under the background of codification of administrative law, to understand administrative behavior as all behaviors made by administrative subjects in exercising administrative power, and to use the concept of "administrative handling" as the most basic unit of administrative behavior. In the future administrative procedure law, we should consider our legal tradition, present situation and realistic requirements in the target mode, content selection and style arrangement, so as to achieve the unity of logic and pragmatism. Starting from the codification of administrative law, this paper gradually analyzes the reasons for the codification of administrative law, the challenges of theoretical research on administrative behavior in China under the background of codification of administrative law and the coping strategies of administrative behavior research under the background of codification, hoping that this paper can contribute to the process of codification of administrative law.

1. Introduction

For a long time, a unified administrative code has been regarded as a wild dream by many people. Some scholars believe that a unified administrative code is to compile the general principles and basic norms of a country's administrative law together to form a unified legal norm system with internal logical connections, rather than collecting all the specific administrative regulations of a country into an administrative law encyclopedia[1]. From the practice of administrative rule of law, the codification of administrative law refers to the formulation of all legal norms that regulate the due process that administrative subjects should follow in completing various administrative acts into systematic written laws and regulations in one code.

Codification of administrative law is a mature form of the development of administrative procedure law. How to solve these problems will directly affect the legislative process and quality of China's administrative procedure law. So far, there are still some differences in the framework draft, expert opinion draft and trial draft of the administrative procedure law drawn up by relevant research institutions and some scholars. This paper intends to make a simple analysis of the above-mentioned problems.

2. The Reasons for the Codification of Administrative Law

The emergence and development of anything has its deep-seated reasons. The replacement of old things by new things is due to the fact that old things cannot meet the needs of social production and life. The codification of administrative law is the product of a certain stage of economic development. With the development of economy, various social problems such as environmental problems, unemployment and public security occur frequently. In order to manage the emerging

social problems, the government gradually expanded the scope of administrative power, and the government began to reflect on the practice of administrative non-intervention[2-3].

With the enrichment of material life, people's pursuit of freedom and dignity has gradually improved, which is manifested in the field of administrative decision-making. People's voice for the standardization and transparency of administrative procedures has gradually increased, and their willingness to participate in the administrative decision-making process has gradually warmed up. Moreover, the contradiction between citizens and administrative organs will increase social disharmony. Therefore, a systematic administrative procedure law that can be found and understood by the general public has become the key to solve this contradiction.

The development of administrative procedure legislation in the world today shows that administrative procedure law has become a symbol of democracy and rule of law in modern society. Due to the continuous expansion of administrative power, it is objectively required to strengthen the restriction of administrative power and prevent the abuse of administrative power. The administrative process is not only regulated by substantive law norms, but also by strict and systematic procedural norms, and the latter plays an increasingly important role in administrative law[4].

Judging from the development of contemporary administrative law, it is generally along the track of standardizing and restricting the operation of state administrative power. The solution of any legal problem can only be achieved through orderly procedures. Therefore, procedures can not only provide an orderly decision-making process, but also achieve considerable justice. From the quotation, it can be seen that the issue of procedure must be considered in combination with the issue of justice. The so-called "due process of procedure" is to emphasize the value of procedure.

3. Challenges of Theoretical Research on Administrative Behavior in China under the Background of Codification of Administrative Law

3.1 The Relationship between Administrative Behavior is Unstable

As far as the unstable relationship between administrative acts is concerned, the basis of its argument is actually that the unified administrative code will damage the ability of administrative organs to deal with colorful social affairs, but this worry is actually unnecessary. Under the unified administrative code, there is still room for local administrative codes in various specific fields and other separate administrative laws and regulations[5]. The content, structure and legislative model of administrative law code are also important issues that legislators should focus on.

The unified administrative code will neither completely replace the administrative regulations, rules and other normative documents with lower legal rank, nor abolish the discretion and legislative power of the administrative organs, nor even affect the power of the legislature to formulate individual administrative laws outside the administrative code, so it will not damage the emergency capacity of the administrative organs, nor reduce their responsiveness.

3.2 Lack of Unified Guiding Ideology

There is a lack of legislative basis as an administrative procedure law in the Constitution. As the fundamental law of the country, the constitution exists to limit the power of the government and should be the most basic source of the administrative procedure law. However, there is no clear stipulation about administrative procedure in our constitution. Under the premise that there is no clear guiding ideology of the corresponding administrative procedure law in the Constitution, it is more necessary to have a unified administrative procedure code as the legislative basis of other separate laws.

The general part of administrative law mainly carries out the overall framework construction, in which the basic system of administrative law involves administrative acts such as permission and punishment, and at the same time, the code formulated in the special administrative law field or the legal compilation in the cross-field of affairs management also involves related administrative acts[6-7]. Decentralized legislation makes the legal system of administrative procedure fragmented,

and it is impossible to uniformly stipulate the basic principles and common system of administrative procedure, so it is difficult to form the overall procedural spirit and viewpoint among public servants and the public, which is not conducive to the formation of the concept of procedural rule of law. However, China's legal tradition is to emphasize entity and neglect procedure, and it is urgent to strengthen the concept of procedural justice to change this backward legal concept.

No matter whether the substantive law or the procedural law is used as the approach to compile the administrative code, it is inseparable from the standardization of administrative behavior. However, the compilation styles of various models show that scholars mostly use the concept of administrative behavior, and the scope of administrative behavior is different. The validity of administrative act is a very important content in the theory of administrative act, and it has always been one of the controversial issues in the field of administrative law in China[8]. Of course, it is still difficult to determine whether these behaviors can be classified into traditional administrative behaviors and what unique characteristics they have before they can be typed, and it has not provided enough support in theory. How to respond to the new administrative behavior in the era of automation, informationization and data in the future administrative law code and the behavior mode with China characteristics in the process of governance are worth thinking about.

3.3 The Requirements of Justice and Efficiency of Administrative Actions Cannot Be Realized

The author believes that the appearance of a large number of illegal administration and even corruption in practice is inseparable from the lack of necessary supervision and restriction of power. Because there is no scientific administrative procedure mechanism, it is still empty talk to control and curb corruption in administrative power according to law. Due to the imperfection of China's administrative procedure law, the orderly operation of administrative acts is affected, and the degree of administrative justice is also reduced, which fundamentally hinders the realization of administrative rule of law.

Contemporary administration can be said to be “responsible administration” to a certain extent, that is, administrative organs must take responsibility for their own administrative actions. It can be seen that the deficiency of administrative procedure legislation is not only the imperfection of the law itself, but also fundamentally affects the construction of administrative rule of law and even the complete establishment of the democratic political system of the whole society. As far as the formulation of China's administrative procedure law is concerned, the legislative purpose should establish the target mode of giving priority to rights (justice) and giving consideration to efficiency, the legislative concept should reflect the requirements of “due process of law”, the legislative principle should be simplified, the principle of openness should be highlighted, and the principle of unity should be supplemented[9]. Codification of administrative law is an important prerequisite for administration according to law.

The key to administration according to law is to have administrative legislation that can be based on, and the lack or imperfection of administrative legislation will only make administration according to law become empty talk. Since the founding of the People's Republic of China, there have been a large number of administrative legislation in China, but most of them are departmental regulations and local regulations with low effectiveness, and there are few administrative legislation in legal form.

4. Coping Strategies of Administrative Behavior Research under the Background of Codification of Administrative Law

4.1 Clarify the Connotation of Administrative Behavior

Governing the country according to law in an all-round way is the essential requirement and important guarantee of Socialism with Chinese characteristics. Whether the administrative law can effectively supervise the administrative power, put the administrative power into the cage of the system, and protect citizens' private rights from arbitrary infringement by the administrative power is related to whether the civil rights stipulated in the Civil Code can be truly guaranteed when they

meet the administrative power, and also to the effective maintenance of the authority of the Civil Code. The author believes that it may be an ideal choice to discuss the meaning of administrative behavior under the background of codification of administrative law, to understand administrative behavior as all behaviors made by administrative subjects in exercising administrative power, and to use the concept of “administrative handling” as the most basic unit of administrative behavior.

The content arrangement of general procedure and special procedure should consider two factors: one is the connection with existing laws, and the other is the need of actual administrative operation. If the relevant contents are already in the existing laws, they can be omitted when formulating the administrative procedure law to avoid unnecessary repetition. This is more important in administrative law than procedural legislation itself.

After decades of in-depth and thorough research in academic and practical circles, the administrative procedure law stipulates not only procedural norms and procedures, but also many related administrative substantive laws. No matter how the theory of administrative law develops, it is certain that the behavior of administrative subjects in exercising administrative power should be bound by the basic principles of administrative law. With the emergence of new administrative behaviors and the structural transformation of administrative law, administrative behaviors other than administrative treatment will surely become the focus of research.

4.2 Make Clear the Basic System That Administrative Behavior Should Adopt

What model should be adopted in China's administrative procedure code mainly depends on the target model and basic principles. As the highest purpose of the whole administrative procedure law, the goal model guides the establishment of basic principles and systems. As a concrete manifestation of the principle of participation, the hearing system plays an important role in the administrative procedure law. Judging from the current situation of China's administrative law legislation, the hearing system is only applicable to administrative punishment, administrative licensing and price decision-making, but there is no definite hearing system in other fields, such as administrative compulsory measures and administrative fees. The openness of confidence is conducive to the acceleration of the process of democratization. Democracy shows that citizens have the right to participate in and discuss politics, and the premise of participating in and discussing politics is to know politics. Therefore, the openness of information is the premise of democratic politics.

Avoidance helps to ensure the fairness of law enforcement, including the fairness of entities and the fairness of procedures. This system has been widely used in law enforcement and judicature. The administrative licensing law, the administrative punishment law and the three major procedural laws all stipulate the challenge system, which is enough to show the important role of the challenge system in law enforcement and judicial process. The period system is the guarantee of the efficiency principle and the rule embodiment of the efficiency mode in the target mode. The period system is to regulate the administrative behavior by stipulating the legal time, and to make a decision within the legal time limit. If the administrative organ fails to perform its duties within the legal time limit, it may bear corresponding responsibilities because of inaction, thus resulting in favorable legal consequences for the administrative counterpart.

At present, the arbitrariness in the formulation of administrative norms in China, the malignancy of administrative compensation disputes, and a large number of irregular charges in administrative expropriation are all in urgent need of corresponding procedural legislation to regulate them; The relationship between substantive norms and procedural norms in administrative law norms is essentially the relationship between content and form. The code of administrative procedure should distinguish between formal hearing and informal hearing, and gradually expand the scope of application of hearing system, especially pay attention to absorbing foreign rules of evidence with minimum qualifications and the principle of file exclusivity, and give full play to the role of hearing transcripts as the basis for ruling.

4.3 Make Clear the Choice of the Style and Mode of Administrative Behavior

Judging from the legislative situation of various countries, some countries have formulated a

unified administrative procedure code, which concentrates the legal norms of administrative procedure in one legal document and is generally unified into a unified code; Some countries have adopted the practice of dispersing the legal norms of administrative procedure in many separate laws, which is generally called decentralization. In order to adapt to the development of market economy system, establish democratic politics and improve administrative efficiency, China must formulate a socialist administrative procedure code that is in line with international standards and embodies China characteristics, so as to unify and standardize the procedures of administrative actions, truly establish the concept of procedural justice, and provide a solid legal basis for the realization of administrative rule of law and even the rule of law.

In the process of codifying the theoretical system of administrative behavior, it is still necessary to further broaden the content and depth of comparative research on administrative behavior and conduct dynamic research. Only by carefully studying the judgment can we understand how the relevant laws are applied in this country, and only by deeply understanding the political and social background related to this theory can we better understand how the corresponding administrative behavior theory came into being and how it developed. We should give priority to standardizing external administrative procedures and give consideration to standardizing internal administrative procedures. The core of standardizing external administrative procedures is to standardize the rights and obligations between administrative organs and citizens, while standardizing internal administrative procedures makes the relationship between central and local administrative organs and local administrative organs clear, and stipulates the establishment and functions of administrative departments and the internal procedures of leading institutions.

The perfection process of any country's legal system is closely related to the basic national conditions of that country. As some scholars have pointed out, it is necessary to consider not only the social and historical conditions, the level of rule of law, the legal awareness of citizens, but also the legislative tradition and technology to establish the legislative model of administrative procedure in China. Therefore, the author suggests that a unified administrative procedure code and a single administrative procedure code coexist in the legislative mode. First, the unified administrative procedure code is the direction of China's administrative procedure legislation[10]. In order to standardize administrative acts and unify administrative procedures, it is necessary to formulate a unified code of administrative procedures and bring all administrative acts into a unified legal track of administrative procedures. Second, the unified administrative procedure law does not exclude the existence of special administrative action procedures. The commonness of administrative procedures constitutes the basis for formulating a unified administrative procedure code. Thus, under the premise of unifying the statutory administrative procedures, it not only embodies the commonness of administrative procedures, but also takes care of the obvious characteristics of different administrative behavior procedures.

5. Conclusions

From the practice of administrative rule of law, the codification of administrative law refers to the formulation of all legal norms that regulate the due process that administrative subjects should follow in completing various administrative acts into systematic written laws and regulations in one code. A unified administrative code will neither completely replace administrative regulations, rules and other normative documents with lower legal rank, nor abolish the discretion and legislative power of administrative organs, nor even affect the power of the legislature to formulate individual administrative laws outside the administrative code. The key to administration according to law is to have administrative legislation that can be based on, and the lack or imperfection of administrative legislation will only make administration according to law become empty talk. The process of codification of administrative law is actually the process of interpretation and systematization of this department's law. With the help of codification discussion, it is an excellent opportunity to promote the academic community to reach a consensus on the basic concepts of administrative law.

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