

# A Framework Analysis of China's Theory of Administrative Legal Relationship in the Codification of Administrative Law

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**Abstract:** At present, the basic situation of China's executive power exercise is that it should be strong but not strong, but what should not be strong is big and boundless. The legal power of administrative organs can not be exercised normally, which is related to the lack of administrative procedure guarantee; The abuse of administrative discretion is due to the lack of administrative procedure norms. The codification of administrative law should first change the traditional cognition, and should no longer regard administrative law and administrative procedure as tools to control administrative power, but as the basic ways and methods to deepen reform, promote national and social development, mobilize and stimulate administrative vitality, social vitality and market vitality, and realize the modernization of national governance and government governance. Codification of administrative law is an inevitable trend, and it is the only way to ensure the realization of administration according to law, build a government ruled by law, and push the level of rule of law in China to a new height. It is under the guidance of this idea that the mode of codification of administrative law should be carefully determined to avoid the process of codification of administrative law squeezing the space of departmental laws such as constitution, so as to seek legitimate reasons to establish the structure and content of administrative law code.

## 1. Introduction

The new era is an era when laws are codified. Vivid legislative practice and the development trend of codification have shown that the codification of administrative law is an inevitable trend, and it is the only way to ensure the realization of administration according to law, build a government ruled by law, and push the level of rule of law in China to a new height.

The codification of administrative law is a theoretical and practical proposition, so it is necessary to systematically study its compilation ideas on the basis of full justification[1]. Although we have not yet formulated a unified administrative procedure law, it is not uncommon for administrative procedure system to be composed of procedural laws, regulations and rules, such as hearing system and explanation system. The path choice of codification of administrative law should be based on local practice and foreign experience, so as to choose the China road that is most suitable for the development stage of the rule of law and the basic national conditions in China.

## 2. Legal Value of General Provisions of Administrative Code

The so-called general principles of administrative code refer to those contents that are embodied in a single administrative code and control the subsequent writing mode of the code[2]. It exists in the administrative code. From this perspective, the general provisions of the administrative code act on the administrative law system through the administrative code. We should know the deep logical relationship among them. In the general principles of law, how to express the formulation basis is not strictly stipulated in China's Legislative Law, so the general principles of administrative code may indicate both the formulation basis of adjacent superior laws and the formulation basis of non-adjacent superior laws, which seems to have no theoretical obstacles in the practice of administrative legislation[3].

As a departmental law, the earliest image of administrative law, like the ancient administrative law in China, is only a means of internal control of the group under a one-way power system, not to mention its own procedural nature and the rights of the subject. Modern administrative law is rooted in the concept of civil rights standard, so its values are ultra vires, invalidation and administrative relief[4], which should be the basis for perfecting the existing administrative law system in China at this stage. The moderate application of administrative license can undoubtedly make up for the defects of the market, promote the rational use of natural resources, and then realize the sustainable development of society. This shows that the general principle of a single administrative code may involve its relationship with subordinate laws, and in some cases it also involves its relationship with adjacent administrative codes[5]. For example, the relationship between the public security administration punishment law and the administrative punishment law. An important content of the general part is to properly handle this adjacent relationship.

Before the reunification of the country, the unification of fragmented jurisdictions and fragmented legal system has always been the initial heart of a country's codification movement. Both the administrative code and the nation-state have the appeal of "unification", and they are closely related[6-7]. For example, after the reunification of France and Germany, the code "has the task of unifying the messy legal system and helping to form a rock-solid nation-state." More achievements in the code will serve as symbols of Chinese civilization, constantly guiding the whole nation towards political unity, cultural identity and social integration. Therefore, we need a modern administrative code like the civil code, which stems from the Chinese nation's psychological and always firm cultural self-confidence.

### **3. Administrative Legal Relationship in the Codification of Administrative Law in China**

#### **3.1 Limited and Efficient Administrative Power**

At present, the basic situation of China's executive power exercise is that it should be strong but not strong, but what should not be strong is big and boundless. The legal power of administrative organs can not be exercised normally, which is related to the lack of administrative procedure guarantee; The abuse of administrative discretion is due to the lack of administrative procedure norms. And all these problems are almost related to what kind of relationship should be constructed between administration and law.

The efforts to codify administrative law in the 21st century have directly turned to the codification of administrative procedure law. Because of the complex nature and wide scope of administrative substantive law, it is difficult and controversial to stipulate the content of general principles of administrative law from the perspective of substantive law. Because the problem that the object of administrative law adjustment is too wide can be solved by typing; The problem of low stability and great variability in administrative legal relations can be abstracted from some relatively stable rules and fixed; Some principles and systems of administrative law are not yet fully mature, which can be solved by strengthening the comparison and research of some basic theories[8]. Especially in the 1920s, China people's expectations for national rejuvenation, their recognition of core values, their preference for code style and their preconceptions about administrative law are very different from those in any period in history.

Of course, controlling the administrative power through the administrative procedure law does not mean that the administrative power is negatively restricted by law, but should actively improve the efficiency of the administrative power on the basis of insisting on restricting the administrative power. Therefore, in the design of administrative procedures, there should be not only general administrative procedures to ensure basic justice, but also simple administrative procedures to meet the needs of administrative efficiency and administrative emergency procedures to deal with administrative emergencies.

#### **3.2 From Power Control to Authorization**

The codification of administrative law should first change the traditional cognition, and should

no longer regard administrative law and administrative procedure as tools to control administrative power, but as the basic ways and methods to deepen reform, promote national and social development, mobilize and stimulate administrative vitality, social vitality and market vitality, and realize the modernization of national governance and government governance. "Power control" and "authorization" should be balanced and coordinated. While granting administrative power to the government, we should pay attention to the standardization of power operation and take corresponding responsibilities, focusing on the positive functions of administrative power in promoting deepening reform, promoting economic and social development, providing more and better public products and services, and ensuring and realizing people's yearning for a better life, not just to maintain administrative order, but their target models and value pursuits are different.

There are many inconsistencies and even conflicts between legal norms, which leads to the application of law often in trouble. The conflict between administrative legal norms exists both at the same level and at different levels[9]. In the process of promoting the decentralized legislative model, the administrative law circle has unswervingly called for the codification of the administrative procedure law, but up to now, there is still no obvious sign of codification of the administrative procedure law. The frustration of the codification of administrative procedure law is complicated, which is closely related to its own misnomer besides the huge gap between social development standard and the concept of legislative power limitation, scholars' expectations and official demands.

### **3.3 Single Law and Uniform Code**

The simplex method is to collect the basic contents of the law in the same code, while the complex method is to stipulate the basic contents of the law in a single line, thus forming several relatively independent codes. Although the compound type does not require high legislative technology, it will inevitably lead to legislative phenomena such as duplication of relevant provisions. From the perspective of comparative law, these two legislative models have their own advantages and disadvantages, which need to be weighed according to a country's specific national conditions. Because the difference of a legal background largely determines the selection of a legislative model.

The codification of administrative law is not to completely start a new code, but to integrate the existing administrative legal norms and make some additions to form a legal system with internal logical relations. Although there are some differences of views on some issues, all kinds of views can almost be fully displayed. Therefore, the development of administrative law and administrative reform are complementary. Every administrative reform can lead to the discussion of administrative law, and the development of administrative law will also promote the reform of administrative system and governance, which has laid the foundation for the codification of administrative law.

Apart from the codification of the entity, only the procedure is unified, but in the administrative procedure, it is completely codified, and all administrative matters are applicable to the unified administrative procedure law, and other laws do not need to have procedural provisions. If we really want to further develop China's administrative law in the future, we can't solve the problem simply by looking for ways from the traditional fragmented administrative law. Modern administrative law should be born with the development of modern commodity economy and the emergence of modern concept of democracy and rule of law, but the traditional social background of our country is obviously contrary to this. China has gradually got rid of the spiritual and economic constraints imposed by tradition on contemporary society, so the country, as the centralized representative of power, should treat the evolution of administrative law itself based on it with a new attitude.

## **4. The Path Conception of Codification of Administrative Law in China**

### **4.1 It is Feasible to Codify the General Principles of Administrative Law**

Formulating a complete and unified administrative code is an extremely arduous legislative task, which requires not only mature theoretical preparation, but also superb legislative technology, and

the large legislative capacity makes it difficult for all parties to reach a consensus. Compared with the formulation of a complete and unified administrative code, it is much less difficult to codify the general principles of administrative law. We can clearly state the legal status of the general provisions in the legislative law and other administrative codes.

Under normal circumstances, the general provisions of the administrative code have the function of connecting the preceding with the following. On the one hand, it can scientifically express the basis for the formulation of the code, and on the other hand, it can well handle the relationship with other departmental laws. This content is essentially the positioning of the general provisions. If we can comprehensively position the legal status of the general provisions, the standardization of the general provisions will become stronger and stronger.

#### **4.2 Actively Learn from the Advanced Experience in the Formulation of the Civil Code**

Due to the lack of advanced examples and experience reference, the topic of codification of administrative law needs more theoretical support and practical exploration to be completed. The formation of any code must be the crystallization of countless previous research and practice[10]. In terms of style arrangement, the civil code adopts the compilation method of general rules and parts. Although this is the basic body setting of civil codes in various countries, it is a rare experience for administrative law codes. In terms of provisions, the Civil Code has largely avoided repetitive provisions in its formulation. In the process of compiling administrative law code, we should also pay attention to it, which only involves the volume of administrative law code, but also involves the systematization.

#### **4.3 Systematization of Specific Provisions of Administrative Code**

If only the administrative law texts are compiled in a centralized way, then this kind of “codification” is of little value. Undoubtedly, the systematization of administrative legal norms is the primary normative purpose of the codification of administrative law, and we have sufficient conditions and capabilities to promote the substantive codification of administrative law. Referring to the compilation experience of China's civil code, the administrative code should also adopt the compilation approach of “substantive codification”, and finally create a systematic administrative code.

The author thinks that the administrative code should be limited to the general administrative law and promoted at present. In other words, first of all, we should form a basic administrative code in the sense of general rules, which can not only reduce the difficulty of formulating administrative codes, but also be compatible with the progress of administrative law legislation in various special fields. Based on this consideration, the current formulation of administrative code is mainly the codification of general administrative law, and this limitation of scope can be compatible with the codification of special administrative law.

Whether it is the modernization and development of state and social governance, or the transformation and upgrading of government governance and administrative law, it is necessary to actively play the role of administrative power and then promote it through administrative means. At the same time, to achieve the creative transformation and innovative development advocated at present, it is also inseparable from the positive actions of the administration. The goal of codifying the administrative law with China characteristics is to meet the needs of the era of social change, and to provide normative guidance for the basic establishment of a government ruled by law and the realization of the law-abiding situation of the whole people through the scientific arrangement of the current administrative legal norms. In order to maintain the structure of the existing single-line administrative legislation, we can set up sub-divisions under the administrative organization law, the administrative activity law and the administrative relief law to form a relatively complete system of administrative legal norms.

### **5. Conclusions**

The codification of administrative law is a theoretical and practical proposition, so it is necessary

to systematically study its compilation ideas on the basis of full justification. Modern administrative law is rooted in the concept of civil rights standard, so its values are ultra vires and administrative relief, which should be the basis for perfecting the existing administrative law system in China at this stage. The codification of administrative law is not to completely start a new code, but to integrate the existing administrative legal norms and make some additions to form a legal system with internal logical relations. As a general rule, the administrative procedure law is the basic direction of China's future administrative procedure legislation. This not only conforms to the basic direction of administrative procedure legislation in the world, but also meets the needs of the rule of law administration in modern society.

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