

# On the Relationship between Constitution and Administrative Law and Its Implementation Path

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**Abstract:** Based on the common concern for public power and the ultimate concern for human rights, the relationship between the constitution and the administrative law is the closest, but there has been no consensus on the specific relationship between the administrative law and the constitution. Constitution and administrative law are two independent legal departments closely related. The implementation of the constitution has different forms. We have made targeted research on different implementation methods. In the process of research, we found that different problems will be faced in the implementation of the constitution. Through the research and analysis of the relationship between the two, this paper makes clear the benign relationship between them, thus promoting the process of the construction of the socialist rule of law in our country.

## 1. Introduction

At the present stage, the way to implement the constitution is mainly to transform the text constitution into the actual social system. In order to better ensure the effectiveness of the constitution implementation, it is very necessary to construct a scientific and reasonable implementation mechanism. The relationship between constitution and administrative law is the closest, and the analysis of the relationship between the two has always been an important topic of common concern and controversy among jurists in various countries. In our country, the traditional view is that “the constitution is the fundamental law, the mother law and the administrative law are the implementing laws of the constitution” [1]. There are legislative organs and the highest administrative organs to implement the constitution, there are judicial organs to apply constitutional norms to judge the judicial implementation of cases, there are also some special organs to implement the constitution. Therefore, the two have certain differences in adjusting objects and scope. However, there are still similarities between the constitution and administrative law. The main body of the implementation will be determined fully and clearly, and then the implementation method will be worked out to further promote the more effective implementation of the constitution and administrative law [2]. In particular, with China's social transformation, new situations and new problems are emerging, and the continuous development of China's administrative law, towards rationality and maturity, it is still of great theoretical and practical significance to re-examine the relationship between the Constitution and administrative law.

## 2. The Present Situation of Constitution Implementation in China

The constitution and administrative law have no substantive differences in their common concern for public power and ultimate concern for human rights. Therefore, the constitution and administrative law have the same value. In the concrete implementation of the constitution, the main body carrying out the implementation is not yet obvious. The specific process force, all aspects can supervise and urge the constitution, for example, whether it is individuals, organizations, or a certain class, for other people's behavior is illegal in the same place. The constitutional review power of the country is not exclusive to the highest authority. The State Council, local authorities and people's governments at all levels all have certain constitutional review power, thus creating a situation in which “anyone can control the constitutional review, but in fact nobody cares” [3]. To a certain extent, it shows that in the implementation of the constitution, the main body of the

implementation work is still lack of certain clarity. This dilemma leads to the difficulty of unifying the implementation path of the constitution, which is not very normative and reasonable. Although the division of public and private laws is widely accepted, the specific standards and values of the division of public and private laws are still controversial. This theoretical argument cannot be an objective fact denying the existence of public law and private law. On the contrary, it promotes the construction of the legal system and the perfection of legal science. In practice, subjects who have the right to bring up the right to review laws and regulations have no enthusiasm for the right to review, and will only bring up the right when the vital interests of these state organs are involved [4]. Therefore, this method of implementing the constitution has not really played a role in implementing the constitution in practice.

### **3. The Relationship between Constitution and Administrative Law**

#### **3.1 The Key to the Effective Implementation of the Constitution is Administrative Law**

The implementation of the constitution needs certain protection and support, then other laws should stand up, such as administrative law, criminal law and civil law. As the fundamental law, the constitution is the premise and foundation for the emergence of administrative law, providing basic principles and conceptual guidance for the emergence and development of administrative law. Moreover, administrative law is dependent on the constitution. On the one hand, “constitutionalism is the soul, power and pillar of the constitution” and “without the spirit and operation of constitutionalism, the constitution has no name” [5]. On the other hand, Professor Otto Meyer, founder of German administrative law, stressed that constitutional state is the premise of administrative law [6]. At the present stage, our country's society is undergoing constant changes. In the legislative work, the legislators of the constitution lack the necessary subjective consciousness, resulting in the lack of a standardized and scientific constitution, which cannot keep pace with the development of the times. For various reasons, it is impossible for a society to eliminate the objective differences and discrimination between people. We cannot ask an ordinary citizen to treat others equally, but we have reason to ask the government to treat everyone equally. Administrative law achieves the constitutional goal of protecting human rights by supervising the administrative actions of administrative organs. At the same time, administrative participation and disclosure of administrative information are also supporting administrative legal systems for protecting human rights.

The full development of administrative law enables the constitution to go down the altar and the basic idea of constitutional government to be integrated into social life. For example, the enactment of administrative procedure law has made it a reality for judicial power to monitor administrative power. The enactment of the state compensation law makes the state the subject of compensation responsibility. At the same time, due to the rapid development of modern social life, there are a lot of social problems that cannot be effectively regulated by law in time. As the fundamental law of the country, the constitution cannot keep pace with the changes of the complex social situation. Social life changes rapidly, and legislators' subjective understanding often lags behind. Constitutionalism is like legislation, which is not the case. Moreover, the high principle and generality of the written constitution, as well as the limitation of its predictive ability, also doomed it to lag behind the complicated and changeable social relations. The enactment of the administrative penalty law has brought the government's restrictions on citizens' personal rights and property rights under legal control. The enactment of the legislative law has brought the government's administrative and legislative acts under the actual supervision of the NPC. The enactment of the administrative licensing law has transformed the government's all-round management into limited management. The constitution is often empty and rigid programs and general principles, but at least it cannot be fully put into practice. On the contrary, without the constitution as the foundation, administrative law cannot be produced, or at most it is just a lot of messy detailed rules and lacks guiding ideology “[7].

### **3.2 The Constitution is the Premise and Foundation for the Emergence of Administrative Law**

From the overall point of view, the fundamental law of our country is the constitution, and other laws are all extended and derived from the constitution. therefore, administrative law and other laws need the foundation and guarantee of the constitution, and it is concluded that the constitution is the prerequisite for its emergence. Administrative law, as the basis for the daily administrative enforcement of administrative organs, specifies the relevant national basic systems established in the constitution, and the basic rights granted by the state to citizens are also specified through specific administrative law. From the perspective of constitutional government, this order is aimed at the government, that is, the executor of the order is the government rather than ordinary citizens. The country's most fundamental political, economic and cultural system stipulated in the constitution guides the emergence and development of administrative law. However, the implementation of administrative law has implemented the basic principles of the constitution and disseminated the basic concepts of constitutionalism. The original mission of administration lies in order. Administrative law carries forward the mission of administration, and with the expansion of administrative field and the extension of freedom scope, this meaning is actually the most positive result of the value of administrative law itself “[8]. As the subordinate law of the constitution, the implementation of administrative law will have direct or indirect influence on the constitution. Not only that, administrative law needs the constitution to provide a reasonable and more necessary theoretical basis in order to lay down the basic principles of administrative law and provide more scientific guidance for its implementation to ensure the development of administrative law in the right direction.

Constitutionalism has become the most important means to correct legislative deviation from constitutional principles. Allowing citizens to challenge the constitutionality of legislation made by democratic procedures through constitutional litigation is also a control over most democratic rules. The spirit of human rights protection in the constitution is the basic value of administrative law. Human rights refer to the basic rights enjoyed by a person as a human being and are also the conditions for everyone to lead a normal life. Respect for everyone's rights and freedoms is an important value pursuit of the Constitution and is also the foundation of administrative law [9]. However, without administrative law supported by constitutional value, the relationship between administrative power and civil rights is easily “misplaced”: civil rights become appendages and derivatives of administrative power, and even become “alms” and “gifts” of administrative organs, leaving freedom and dignity out of the question. The important task of constitution is to control power through mutual restriction between public powers. Public powers in modern countries are generally composed of legislative power, executive power and judicial power. Constitutionalism is realized through mutual restriction and balance among these three powers. The core value and concept of this constitutional government regulate the nature and direction of the interaction between the constitution and administrative law, and at the same time constitute the most fundamental internal connection between the constitution and administrative law.

### **4. Analyzing the Path of Constitutional Implementation**

The constitution, which relies on the supervision and implementation of the National People's Congress, is in a dilemma in our country. The constitution cannot be litigated, nor can it be reviewed as unconstitutional. It has become a document. Although there are some defects in the constitution itself and backward constitutional theories in the current predicament of constitution implementation. The most external meaning of the constitution is that the country's right to choose is restricted by law, and this meaning is also the embodiment of the value of administrative law, so the mission of administrative law is the purpose of implementing the constitution, and the implementation of administrative law is related to the fate of the constitution. Based on the close relationship between the constitution and administrative law, trying to implement the constitution through administrative law can become our thinking to solve the dilemma of the constitution implementation. Therefore, using the development of administrative law to change the

implementation of the constitution and seeking the administrative law path for the implementation of the constitution has become a possible practical choice in China.

#### **4.1 Administrative Disputes over Constitutional Rights Should Be Brought into the Scope of Administrative Litigation**

It is the goal of constitutionalism and rule of law to establish an effective right relief mechanism and realize a lawsuit guarantee without loopholes. Now more and more citizens know how to defend their constitutional rights through administrative litigation. When several rights of citizens, such as personal rights, property rights, education rights and social assistance rights, are infringed by administrative powers, the administrative disputes arising therefrom are brought into the scope of administrative litigation, but other freedoms or rights-constitutional rights such as equality rights, freedom of religion, freedom of speech and publication, freedom of communication secrets-cannot obtain judicial relief through administrative litigation. From the angle of administrative law, citizens can not only use administrative law to protect their legitimate rights and interests, but also make administrative law highly effective in its implementation and the implementation of the constitution also highly effective. In practice, some administrative acts that violate citizens' constitutional rights are often rejected or rejected by the court because they are beyond the scope of administrative litigation. For example, the rights to education, labor, rest and material assistance stated in our constitution cannot be realized through judicial procedures according to the constitution, but these rights can be protected through administrative litigation. As the fundamental law of the country, the Constitution should be universally recognized by the whole society. Its own provisions must be sound and good, and it is a true "good law".

The constitution is an important part of the modern national legal system, and the basic rights of citizens recognized by the constitution are also citizens' legal rights. Academic circles are also carrying out theoretical research in terms of expanding the scope of accepting cases in administrative litigation, the scope of court's examination of administrative litigation cases, and the choice and application of the law when the court applies the law, so as to increase the supervision of administrative litigation over the implementation of the constitution and enhance the constitutional implementation function of administrative law. When citizens' constitutional fundamental rights are violated, if they cannot be guaranteed through litigation or directly litigate according to the constitution because there is no corresponding specific legal provisions, then the existence of constitutional fundamental rights will lose its independent significance. Therefore, the basic legal concept of "constitution first" is the value goal that the society ruled by law and the constitutional government country should actively pursue. In this way, it can also reduce all kinds of documents with shortcomings and ensure that the constitution can safeguard fair and legitimate rights and interests at the highest level [10].

#### **4.2 Constitutional Rights Norms Are Directly Applied in Administrative Litigation**

Judging from China's administrative litigation system and legislative supervision system, courts cannot apply the constitution in administrative litigation. However, in theory and in practice, the constitution needs to have the effect of direct judicial application. The ideal of constitutional government is that the rulers attach importance to the authority of the constitution, the supremacy of the constitution and rule according to the constitution. However, the constitution will not be implemented automatically and needs to be implemented through ordinary laws. The core spirit of administrative law requires restriction of administrative power and administration according to law. This is the implementation of the Constitution and the concrete institutionalization of governing according to the Constitution. The direct application of constitutional rights norms will enable citizens' constitutional rights to be strongly supported by administrative litigation, make the constitution a "living constitution" that actually protects citizens' rights, enable constitutional rights to be effectively protected by justice, and endow constitutional rights on paper with fresh life. In the implementation of the specific administrative law, relevant departments need to use non-treatment methods and eliminate the hidden influence in time to ensure the stable implementation of the constitution, thus more actively challenging the existing problems in the implementation of the

constitution.

The implementation and development of administrative law have great significance and influence on the development and perfection of the constitution. However, there is also the possibility of some kind of separation from the constitution. How can we achieve the development and perfection of the constitution while promoting the development of administrative law? Therefore, to study the relationship between them is helpful to improve the effectiveness of the constitution implementation, thus it should promote a positive development direction of administrative law, which is the key link to improve the effectiveness of the constitution implementation. The constitution is highly authoritative and stable and cannot be changed overnight. However, administrative law has the characteristic of flexibility and can actively apply to the needs of social life. To ensure the effective judicial protection of constitutional rights and to give fresh life to constitutional rights on paper. The principle and generality of constitutional rights norms are precisely the fundamental role of the constitution as a guarantee of citizens' rights. The principle and generality of constitutional rights norms are precisely the fundamental role of the constitution as a guarantee of citizens' rights.

## 5. Conclusion

To sum up, the constitution is the fundamental law of a country, its vitality lies in its implementation, and the guarantee of its authority also depends on its implementation. The essence of administrative law and constitution is to restrict the power of government and protect the rights of citizens. Both the administrative law and the constitution can play a role in protecting citizens' rights, but there is a certain close connection between the two. In order to implement the constitution more effectively, the administrative law should bear the necessary responsibilities in its operation. Therefore, under the premise of guiding by the constitutional concept and spirit, we can better promote the development and perfection of administrative law. Moreover, through the constitutional review system and constitutional litigation mechanism to ensure the coordination of the constitution and administrative law, promote the development of the relationship between the two in a benign direction. The constitution can be implemented through administrative litigation. Administrative law is just like opening up the pipeline between constitutional norms and real life. Through the function of administrative law, the high-ranking constitution enters the social real life.

## References

- [1] Wang Lianwen. On the restriction of our constitution on administrative law. Shang, no. 7, pp. 202-202, 2015.
- [2] Meng Jiabin. Analysis on the protection of the right to subsistence from the perspective of the relationship between the Constitution and administrative law. Intelligence, no. 2, pp. 290-291, 2015.
- [3] Yuan Shuai. Discussion on the Principle of Legal Reservation in Constitution and Administrative Law. Shanxi Youth no. First Half Month), no. 006, pp. 93, 2019.
- [4] Liu Jiayi. Analysis of the relationship between economic law and administrative law. Zhifu Times, no. 1, pp. 72-72, 2015.
- [5] Wang Lan. Thoughts and thoughts on the revision of the Archives Law from the perspective of national governance. Archives Research, no. 1, pp. 41-48, 2015.
- [6] Ai Wen, Zhang Huichao. Continue to Push Forward Cross-district Court Reform-Interview with Professor Jiang Mingan, Director of the Center for Constitutional and Administrative Law Research of Peking University. People's Rule of Law, no. 8, pp. 33-35, 2017.
- [7] Lu Yuan, Liu Zhaoxu. Implement the relevant provisions of the Constitution and administrative law in the process of production safety supervision. Motherland, no. 20, pp. 286-286, 2016.
- [8] Ma mengyun. Teachers and students' research and university governance-taking the articles of

association of Peking university as an example. essays on administrative law, pp. 84-101, 2015.

[9] Diao Yingdong. Research on the Enforcement Effect and Application Scope of Administrative Law and Constitution. Staff Law World, no. 022, pp. 13-13, 2016.

[10] Zong Yanxia. On the protection of intellectual property rights by administrative law and its path. Journal of Shaoyang University: Social Science Edition, no. 1, pp. 37-43, 2016.