

Theoretical Foundations and Practical Issues of Administrative Agreements in Administrative Law

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ABSTRACT

This essay covers the legal theory that explains administrative agreements and the main problems in reality. It looks at the function, features, and regions in which these agreements are applied by the administrative law system. In order to investigate how administrative agreements balance public interests with private rights, the study integrates administrative law with contract theory. It also examines how these agreements apply the rule of law. The research also looks at potential problems that might occur when administrative agreements are completed. It covers the limitations of judicial review as well as the ways in which conflicts are settled. The paper proposes ways to strengthen the legal system of China's administrative agreements by using worldwide experience. These recommendations concentrate on the following: a more robust dispute resolution system; a greater transparency, fairness, and clear legal requirements. This research is about the study of the theory of governance, which is carried out by the principle of law, and the theoretical basis, the theory is to provide the practical guidance and theoretical support for the better management of administrative agreements and to form a government based on the rule of law.

KEYWORDS

administrative agreement; dispute settlement; legal system; rule of law principle administrative consent

1 Study Topic both Concept and Value

1.1 Definition and Degree of the Legal System

1.1.1 Definition of Administrative Agreement

An administrative agreement is when an administrative body, while performing its duties, works with another party or social group to reach an agreement through discussion in order to achieve a specific goal. It has both the characteristics of compulsory and public welfare actions, but also the qualities of an equal and voluntary contract. In the administrative act system, the administrative agreement is seen as a special type of administrative act. Compared to traditional unilateral acts (like orders, licenses, or penalties), it focuses more on cooperation and discussion between the administrative body and the other party.

1.1.2 Scope of Administrative Agreements

With the growth of socio-economic development, the use of administrative agreements has expanded in several areas. The government provides public services and promotes social development through administrative agreements in a number of fields, including the procurement

of services in education, healthcare, and culture, infrastructure construction, resource development and utilization, and ecological and environmental governance. These agreements are usually implemented by the government through market mechanisms, in cooperation with private enterprises or other organizations.

In public service provision, the government uses administrative agreements to offer services that meet society's basic needs. For example, in education, the government may sign agreements with private schools, educational institutions, or other organizations to provide preschool education, basic education, and vocational training.

Infrastructure development is another area where governments often use administrative agreements, especially through public-private partnership (PPP) agreements. These agreements are made between the government and private investors to finance, build, and operate large infrastructure projects. Examples include roads, bridges, subways, water supply, power supply, and other public facilities. PPP agreements help governments attract private investment, reducing financial pressure. They also allow the government to use the private sector's efficient management and innovation to improve project execution and operations.

Governments frequently use the land use and resource development agreements as part of their management and approval of the use of resources by land uses and mineral resource development agreements in the process of resource development and utilization. Under particular circumstances, these agreements grant businesses or other organizations the ability to use land or create mineral resources. Through the terms of the contract, this approach guarantees efficient resource development while simultaneously safeguarding the environment, the public interest, and fair competition.

Under land use contracts, the government usually specifies the purpose of the land, how long it takes to use the land and what conditions are for development of land. This guarantees the sustainable use of resources and also the best interests of society.

In ecological and environmental governance, environmental cooperation agreements between governments and organizations are becoming more common. These agreements focus on ecological protection, pollution control, and resource recycling, especially in the context of climate change. Governments often work with businesses, environmental organizations, or research institutes to develop and implement environmental protection projects. For example, the government might sign green development agreements with businesses to promote clean energy use, reduce industrial pollution, or work on ecological restoration. These partnerships allow the government to use the technical strengths and resources of businesses to better achieve environmental goals and encourage sustainable development in society.

In terms of government, the government is able to successfully integrate all aspects of the public sector, including social development and the services they receive, thanks to these administrative agreements. Nevertheless, they also raise the demands of the government to supervise and oversee the administration as well. Making sure that there is fairness, sustainability, and transparency is one of the important tasks in overseeing administrative arrangements. It is also critical to defend the general public interest and to refrain from using administrative authority abused.

The definition and application of administrative agreement are helpful to lay the theoretical basis of this work and to give us some theoretical background for the further research of administrative legal basis and practical problems of administrative law, which can also help to explain the function of administrative and the significance of administrative legislation system.

1.2 Realistic Needs

As the social governance model changes, the use of administrative agreements in areas like

government function transformation, public service outsourcing, and infrastructure construction is becoming more common. Building a modern service-oriented government requires using social resources and strength. Administrative agreements help by clarifying the rights and responsibilities of the government and social groups, providing support for the diversification of social governance. For example, in public services like education, healthcare, and pensions, administrative agreements have become an important way for the government to bring in market mechanisms, which helps improve service quality and efficiency. In infrastructure projects, administrative agreements (like the PPP model) offer a useful solution for financing, building, and operating large-scale projects, reducing the pressure on public funds.

On the other side of the fact that there have arisen in practice as administrative arrangements have both public and private law characteristics; there's a dearth of openness; and there's no weak monitoring systems; which might not only interfere with administrative objectives, however additionally cause conflicts; therefore, increasing the administration's management; and strengthening of administrative legitimacy; and legitimacy; which might cause conflicts and therefore, the problems of the administrative agreements; therefore; enhancing the legitimacy; credibility and enforcement; which might be the main problems of modern law-based administration is the key challenge of increasing the administrative arrangements and strengthening the legitimacy and legitimacy; which might lead to disputes; as a result of which there's the same.

1.3 Research Value

Executive agreements make the investigation of the most important thing to do. It might, firstly, assist in strengthening the legal basis of administrative agreements and make them more understandable of the function of those arrangements in administrative law. At the moment, there is still a lot of theoretical study about administrative agreements that is insufficiently finished. The study can give more clarity to the application of these agreements in practice because to their nature, function and legal ramifications.

Second, administrative agreements play a key role in how the government carries out its functions. Regulating these agreements helps promote lawful administration and prevent the abuse of power. It not only helps the government and social groups establish a clearer relationship of rights and responsibilities but also effectively controls the use of administrative discretion and reduces disputes. Additionally, studying how disputes are resolved in administrative agreements can protect the legal rights of those involved and improve the transparency and trustworthiness of government actions.

2 Juridical Theoretical Foundations of Administrative Agreements

2.1 Combination of Contract Theory and Administrative Law Principles

An administrative agreement is a unique legal form that has both the nature of a contract and the features of an administrative act. In this legal form, combining contract theory with administrative law principles is especially important. An administrative agreement must not only follow the principle of private law autonomy, ensuring equal consultation and voluntary choice between the parties, but it must also comply with public law. This ensures that the government bodies, when using public power, stay focused on the public interest and avoid abusing their power.

According to contract theory, administrative agreement is defined as the principle that guarantees the autonomy of private law as well as the parties' will and the significance of it, which are important points of view. Through the process of negotiation, the administrative body and the

other party get to an agreement, which also has the authority to do so, as to have rights. Because of this, administrative agreements are contractual in nature and have different characteristics.

An official agreement that adheres to public law rules, however, is more about administrative actions in addition to being a type of one that is civil in nature. Administrative authority shall not violate the legal rights of third parties, go above and above the authority given by the law, and do so by making sure that the agreement is of the public interest and abides by the rules that apply. Administrative law also needs to regulate and keep an eye on the execution of administrative agreements in order to make sure that they are lawfully, fairly, and legally enforceable.

Therefore, since the legal structure is that administrative agreement shall be in accordance with the law as it shall be, and it shall not only be able to exercise the same principle as the administrative law; the other shall be in the same order as the law of the administration; as such shall be able to balance the contract theory with the administrative law principle; while ensuring administrative authority shall not follow the law, as it shall act fairly and so that administrative law shall perform the public duty; this balance is fundamental for the successful functioning of administrative agreements; which is therefore an important basis of legal theory for administrative law to be able to perform the law of the administrative law.

2.2 Embodiments of the Rule of Law

As administrative activity is carried out, the rule of law is the only way that an administrative deal must be carried out by the law, which makes sure that the application of administrative power, the government's duty, and the people's basic right protection are in line with the law when it is applied by the government, which has certain requirements and mostly related to legal administration, as the basic principles of proportionality, and according to the rules of administrative law and the following procedures.

Following the law is the core requirement of administrative agreements. When signing and carrying out administrative agreements, government bodies must make sure the agreement is lawful and follows all laws, regulations, and policies. They cannot go beyond their legal powers or break the law to make an agreement, or the agreement could be seen as invalid or challenged legally. Also, government bodies need to make their responsibilities clear to ensure that the agreement serves the public interest, not just a single administrative goal or the interests of one party.

The principle of proportionality is very important in administrative agreements. This principle says that administrative actions should not interfere too much with private rights and interests. The content and actions in an administrative agreement must be reasonable and appropriate, without placing unnecessary or excessive restrictions on the parties' freedom. Specifically, the measures in an administrative agreement should match the intended goals, avoiding harsh rules or using too much power. Administrative objectives should be achieved through reasonable and necessary measures, which helps prevent excessive interference and the abuse of power.

Due process requires that signing and carrying out administrative agreements must be done in a way that ensures fairness and transparency. Before making an agreement, a government body usually needs to conduct thorough research, assessment, and consultation to make sure the decision is in the public interest and that the rights of the relevant parties are fully protected. Additionally, when carrying out the agreement, the government body must provide necessary monitoring and feedback systems to identify and fix any problems quickly. This helps ensure that the agreement is carried out according to the law and serves the public interest.

By following the principle of the rule of law, administrative agreements can make sure that government bodies respect the law while carrying out their public duties and attaining goals of

fairness, impartiality, and transparency. These requirements are not only a guarantee of the legitimacy of administrative agreements but also the basis for guaranteeing the rule of law and fair administration.

2.3 Public Interest Priority Against the Protection of Private Interest

The most significant consideration for administrative agreements is usually the public interest. When making agreements, governments must make sure that the community as a whole benefits from their objectives, which include public services, environmental protection, or infrastructure development. Private interests, however, do not necessarily mean that they should be disregarded. Administrative agreements must safeguard the interests of the public and to make sure that they are fairly protected, in addition to defending the rights and interests of private parties.

Private parties take on responsibilities and obligations in administrative agreements, so their legitimate interests must be clearly defined to prevent unfair restrictions or excessive interference. The government should protect the private party's interests through fair compensation and reasonable contract terms, while avoiding abuse of power. In general, administrative agreements should achieve a balanced and fair result by meeting public goals while also ensuring private interests are not unfairly affected.

3 Practical Aspects of Administrative Agreements

3.1 Disputes in the Performance of Contracts

Disputes can arise during the performance of administrative agreements, especially if the government changes or ends the contract unilaterally. These agreements often involve cooperation between the government and private parties. During the contract's performance, the government may need to change or cancel it due to changes in public policy, budget adjustments, or other reasons. However, the government cannot exercise this power without limits. The law requires that the government's decision to change or end the contract must meet certain conditions and follow proper procedures. The government must have legal reasons, such as public interest or force majeure, to change or end the contract. It must also follow the correct process, such as informing the other party, providing a reason for the decision, allowing the other party to respond, and possibly offering compensation. If the government does not meet these requirements, the change or termination may be considered unlawful or invalid.

Disputes in administrative agreements often involve breaches of contract and ways to resolve disputes. If one party does not fulfill the contract, the other party can ask for the contract to be fulfilled or for damages, as stated in the contract. This is especially important when the government unilaterally ends a contract, as private parties may face financial loss and harm to their interests. It is crucial to ensure they have access to legal ways to fix the situation. The law provides ways for affected parties to seek justice, such as administrative review and administrative litigation. Contracts also usually include terms for breach of contract and dispute resolution, which explain the responsibility and compensation for both parties if they fail to fulfill their obligations. These legal protections, along with breach-of-contract clauses, create a system to ensure fairness and legality in the performance of administrative agreements.

3.2 Boundaries of Judicial Review

Judicial review of administrative agreements is an important aspect of administrative law, but the

limits and standards of this review need to be clearly defined. When courts review administrative agreements, they primarily check whether the administrative authority has exercised its powers according to the law, followed the correct procedures, and ensured that the administrative act complies with legal and regulatory requirements. However, the court's review does not examine the reasonableness of the administrative authority's policy choices or decisions. Instead, the focus is on whether there have been procedural violations or abuse of power in the administrative process.

The scope of judicial scrutiny in administrative agreements typically includes determining whether the administrative organ has acted within the limits of its legal authority and adhered to the procedures established by applicable laws. For example, when an administrative organ decides to modify or terminate an administrative agreement, the court will assess whether the organ has followed the required statutory procedures. This includes checking if the organ has provided prior notice, offered the opportunity for the parties to express their views, and ensured that a sufficient explanation and reasonable compensation are provided. If the administrative organ fails to meet these procedural requirements, the court is authorized to intervene and declare the action invalid.

3.3 Distribution of Powers and Responsibilities and Risk Control

In an administrative agreement, the allocation of powers and responsibilities between the administrative organ and the counterparty is crucial for ensuring fairness and preventing the abuse of power. As the executor of public administration, the administrative organ has certain powers, but these powers must always be exercised within the bounds of the law. The agreement should clearly define the roles, duties, and limits of authority for the administrative organ to ensure that its actions remain lawful and just. This serves to avoid potential abuses, such as overstepping legal boundaries or acting in an arbitrary manner.

At the same time, the relative (the private party) must have well-defined rights and safeguards, including the right to seek legal recourse in cases of dispute. This could involve clearly established provisions on breach of contract and compensation mechanisms. By ensuring these protections, the agreement maintains a balance, securing the rights and obligations of both parties and fostering an equitable relationship between the government and the private sector. This clarity helps to mitigate the risks of unfair treatment or exploitation and enhances the overall legitimacy and fairness of administrative agreements.

In administrative agreements, it is very important to clearly define the powers and responsibilities between the administrative organ and the counterparty. To avoid risks like inequality or abuse of power, the agreement should set clear terms on the duties, obligations, and limits of the administrative organ's authority. This helps prevent the abuse of power and unfair actions. The administrative organ, as the executor of public administration, has certain powers, but these must follow the law. The agreement should define the organ's responsibilities and powers while protecting the counterparty's rights, such as the right to seek legal relief, breach of contract provisions, and compensation rules, ensuring both parties are treated equally.

Risk control is also very important in administrative agreements. Since these agreements involve public resources and interests, risks like policy changes or budget shifts may occur during the agreement's execution. Therefore, the agreement should include a proper risk management system, such as liquidated damages, compensation clauses, and force majeure provisions, to make the responsibilities clear and explain how to handle special cases. This helps ensure the agreement is fulfilled and protects against unfair impacts from the government changing or ending the contract. In addition, preventing abuse of power is an important factor when designing the agreement clauses. To stop misuse of power by the administrative organ, the agreement should include clear rules and review steps.

4 International Experience and Comparative Analysis

4.1 Reference to Relevant Systems Abroad

Many countries have set up different systems for administrative agreements. The experience of some of these countries is a useful reference for improving China's system. For example, France and the United States have valuable legislation and practices in the field of public or administrative contracts. Their experience can help guide improvements in China's administrative agreement system.

The French administrative contract system has a long history and is very important in administrative law. These contracts are agreements between the government and private individuals. They allow the government a lot of freedom, but they are also under a strict legal framework. In France, administrative contracts focus on the public interest. The government must follow public law rules, such as public service responsibility and transparency in legal procedures, when performing these contracts. Additionally, French administrative contracts highlight the "public nature" of the contract. This means the government represents both its own interests and the public's interests. As a result, these contracts face stricter checks, especially during their execution. The government must follow the principle of proportionality and due process.

The public contract norms of the United States are different from those of France, but they also emphasize the transparency and fairness of contracts. The U.S. public contract law system is more complete, involving government procurement, infrastructure construction and other areas. In the United States, the government regulates all public contracts through public contract law to ensure that the government's procurement process is open, fair and transparent. The administrative contracting system in the United States focuses on the legality of procedures, especially in the bidding and fulfillment of contracts, where the government needs to follow clear regulations to safeguard market competition and prevent corruption. In addition, the United States has many successful experiences in risk management.

By learning from France and the United States, we can get useful ideas for designing our administrative agreement system. France focuses on the importance of public interest and legal procedures. The United States highlights contract transparency, fairness, and risk management. China can combine the strengths of both to create a legal framework for administrative agreements that fits China's needs. This would help ensure fair implementation and protect the rights of all parties involved.

4.2 Comparison with China's Practice

By comparing the foreign administrative contract system with China's practice, we can find valuable lessons and areas for improvement. In France, the system focuses on the priority of public interest and strict legal procedures. In the United States, the emphasis is on openness, fairness, and transparency in contracts. In China, the administrative agreement system is still being developed. Although a legal framework has been established, there are still problems, such as the government's ability to change or cancel contracts unilaterally and the lack of transparency in procedures. For example, China does not have an effective review mechanism in some areas, which may lead to unfair government actions.

By learning from France and the United States, China can improve the review process for administrative agreements to make sure government actions are legal and transparent, especially during contract execution, to prevent abuse of power. The U.S. focus on openness, fair competition, and risk management can also guide China, particularly in improving government procurement and public contract management. This could increase transparency, clarify breach of contract liability,

and improve risk-sharing mechanisms. By combining foreign experience with China's situation, the administrative agreement system can be improved to better balance citizens' rights and the public interest.

5 Recommendations for Improving the Legal System of Administrative Agreements

5.1 Clarify the Legal Position and Scope of Application

In order to better regulate the administrative agreement, its nature and field of application should first be clarified through legislation or judicial interpretation. As a legal form with the nature of both private law and public law, administrative agreement needs to be distinguished from other administrative acts (such as administrative licenses and penalties). It should be made clear which administrative matters are suitable to be dealt with by way of agreement and which should be resolved by other administrative means. In addition, the scope of application of administrative agreements should be appropriately defined for specific areas such as the transformation of government functions and the outsourcing of public services, to ensure their compliance and operability. This will provide a clear legal framework for the implementation of administrative agreements, which will help regulate administrative behavior and avoid abuse of power.

5.2 Strengthening the Transparency and Fairness of the Agreement Process

In order to enhance the legitimacy and credibility of administrative agreements, the transparency and fairness of the agreement process should be strengthened. First, the government should establish a perfect information disclosure mechanism to ensure that the process of making, implementing and supervising the agreement is transparent to the public. Second, it should ensure that the views of the community can influence the content and implementation of the agreement through public participation mechanisms, such as public consultations and hearings. Finally, the government should follow the principles of fairness and impartiality in selecting the parties to the agreement to ensure that the agreement process is unbiased and to avoid the risk of transfer of benefits and abuse of power. These measures will help to enhance the standardization of and public trust in administrative agreements.

5.3 Optimizing the Dispute Settlement Mechanism

Improving the dispute resolution mechanism of the administrative agreement, especially in terms of arbitration and judicial review, can provide the parties with a more efficient and fairer way of relief. By optimizing the arbitration procedure, the time cost of dispute resolution is reduced and its fairness is ensured. At the same time, the review responsibilities of the courts should be clarified and judicial supervision of administrative agreements should be enhanced, especially with regard to misconduct and abuse of power. These measures will help to better resolve disputes in the performance of administrative agreements and safeguard their smooth implementation and the rights and interests of all parties.

6 Conclusion

In this paper, we have discussed in depth the jurisprudential theoretical basis of administrative agreements, practical problems and suggestions for improving the legal system. By analyzing the legal nature of administrative agreements, the embodiment of the principle of the rule of law and

the challenges in practice, we clarify the important role of administrative agreements in realizing the transformation of governmental functions and promoting social fairness and transparency. At the same time, by drawing on international experience, we propose a specific path to optimize the legal framework of administrative agreements in China, emphasizing the necessity of legal positioning, information disclosure, fairness guarantee and dispute resolution mechanisms. Strengthening the standardized management of administrative agreements will help to improve administrative efficiency, safeguard public interests and promote the construction of a government based on the rule of law.

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