

The systematic construction and application expansion of the principle of proportionality under the cross-view of law

Yujing Song¹, Jianqiang Song^{2*}

¹School of Law, China University of Political Science and Law, 100088 Beijing, China

²Fudan University Law School, 200438 Shanghai, China

ABSTRACT

This article deeply discusses the principle of proportionality, which is of great significance in the modern legal system and runs through the fields of constitutional and administrative law. The first chapter expounds its concept, basic connotation, legal basis and dual attributes in the constitution and administrative law. Then it constructs the proportional principle system under the cross-vision of Constitution and administrative law, covering the respective systems of constitution and administrative law and the integration of the two cross-fields. Then it analyzes its application and expansion in public governance, digital governance, national emergency and other situations. Finally, from the legislative, judicial and administrative levels, it puts forward the perfect path for the application of proportionality principle, aiming at providing theoretical support and practical guidance for standardizing the exercise of public power and protecting citizens' rights.

KEYWORDS

proportionality principle; The Constitution; Administrative law; System construction; Application expansion; Perfect path

At present, with the gradual perfection and increasing complexity of the modern legal system, the principle of proportionality is like a key link, which runs closely through the two important legal fields of constitution and administrative law. It is not only an abstract legal standard, but also a key element of regulating and restricting the exercise of public power in actual operation, and becomes a solid barrier to protect citizens' rights from undue intrusion of public power. In today's society, the tentacles of public power continue to extend, covering all aspects of social life, whether it is urban planning and construction, economic regulation and management, or social order maintenance, the exercise of public power is closely related to the vital rights and interests of citizens. Under such a background, in-depth exploration of the connotation of the principle of proportionality, construction of a sound system framework, and a clear understanding of its application in different situations and how to optimize and improve it are not only of great significance in the field of legal theory research to fill gaps and deepen cognition, but also in social practice, in order to create a fair, just and orderly legal environment^[1]. It provides indispensable theoretical support and practical guidance to help the society under the rule of law develop in a more mature and stable direction^[2].

1 Overview of the principle of proportionality

1.1 Concept and basic connotation of proportionality principle

The principle of proportion, in essence, is to build a reasonable bridge between the purpose of the act and the means of realization in the process of implementing the public power act. It emphasizes that the public power behavior must maintain a reasonable and appropriate dynamic balance between the means chosen and used in the process of pursuing a specific goal. Its basic connotation includes three key elements that are closely linked and progressive, namely, appropriateness, necessity and narrow proportionality.

Appropriateness requires that the means of action taken by the public authority can effectively promote the achievement of the established goals in both logic and practice. For example, if the government aims to improve the convenience of urban public transportation and then decides to vigorously promote the public bicycle project, then the implementation of the project should be able to truly encourage citizens to choose public bicycles in actual operation, reduce the frequency of private motor vehicles, and thus alleviate traffic congestion to a certain extent. If such an effect can be achieved, It shows that the method has the appropriateness^[3].

Necessity emphasizes that in the face of a variety of possible means to achieve the goal, the public authority has the responsibility and should weigh carefully, and select the least damaging means to the rights and interests of citizens. For example, in the control of urban environmental pollution, we can choose the radical means of completely stopping the relevant polluting enterprises, or we can guide enterprises to upgrade and transform technology to achieve energy conservation and emission reduction. From the perspective of necessity, as long as technological upgrading and transformation can achieve pollution control goals, this means should be preferred, because it has relatively little damage

to the normal operation of enterprises and the employment of employees and other citizens' rights and interests^[4].

The narrow proportionality focuses on the measurement between the benefits brought by the implementation of the means and the damage caused to the rights and interests of citizens. This requires comprehensive and integrated consideration, not just focusing on one aspect. For example, in order to host a large international event, the government decided to carry out a large-scale landscape renovation project in some parts of the city. In this process, although the holding of the event can improve the international image of the city and bring certain economic and social benefits, it may also cause many troubles to the daily life of the surrounding residents, such as noise pollution and inconvenient transportation. Narrow proportionality requires that in this case, the benefits brought by the activity and the damage suffered by the residents should be carefully assessed to ensure a relatively balanced state between the two. If the damage far exceeds the benefits, the means do not meet the narrow proportionality requirements^[5].

1.2 Legal basis of proportionality principle

The principle of proportionality is deeply rooted in the fertile soil of the idea of a state governed by law. The core of the rule of law is that the track of public power must always be strictly restricted and regulated by law, and its fundamental purpose is to build an impregnable protective barrier for the basic rights of citizens. Under the framework of the rule of law, public power is not borderless and arbitrary, but is given a clear mission and responsibility, that is, within the scope of the law, to create a stable, harmonious and orderly social environment for citizens^[6].

At the same time, the principle of proportionality is also a vivid embodiment of the pursuit of human society's lofty values such as justice and equity in the legal field. Justice requires that the public power must uphold a fair and impartial attitude when dealing with various affairs, and give equal consideration and respect to the demands of different stakeholders. Fairness emphasizes that the result of public power behavior should be reasonably distributed among different groups to avoid the phenomenon of excessive inclination of interests. Once the exercise of public power deviates from the principle of proportionality, it is very likely to slide into the abyss of power abuse, break the original fragile balance pattern of justice and fairness, and cause social contradictions and conflicts^[7].

From the perspective of philosophy, the principle of proportion contains profound thoughts of moderation and balance. In the development process of nature and human society, everything follows certain laws and seeks a relatively stable state of balance in dynamic changes. The principle of proportionality draws on this philosophy and provides rational and scientific guidance for legal practice. It encourages legal practitioners to fully consider the relationship between various factors when formulating legal rules and implementing legal acts, pursue a proper "degree", and avoid going to the extreme of excessive or insufficient, so that the legal system can always maintain good adaptability and operational vitality in the complex and changeable social environment.

1.3 The dual attributes of the principle of proportionality in the Constitution and administrative law

At the constitutional level, the principle of proportionality plays an important role and can be called a very important constitutional principle. As the fundamental law of the state, the Constitution shoulders the sacred mission of regulating the operation of state power and guaranteeing the basic rights of citizens. The principle of proportionality plays a key role in macro-regulation, which is like a hanging lamp, pointing out the direction and demarcating the boundary for the exercise of state power. It is always vigilant against the wanton expansion of state power to ensure that citizens' basic rights can be fully respected and protected in the face of state power, and are not excessively violated by public power in any unreasonable way. For example, when the state restricts certain rights of citizens out of the need of maintaining public interests such as national security and social stability, the principle of proportionality in the Constitution requires that such restrictions must be carefully weighed, the means of restriction should be truly necessary for the realization of public interests, and the damage caused to citizens' rights should be controlled to the minimum extent^[8]. At the same time, a reasonable proportional relationship should be maintained between the public interest brought by restrictions and the degree of damage to citizens' rights.

In the field of administrative law, the principle of proportionality also plays an indispensable role and is one of the basic principles of administrative law. Administrative law mainly focuses on the norms of administrative behavior of administrative organs. As the direct executor of public power, administrative organs' daily work is closely connected with citizens' lives. The principle of proportionality directly regulates the process of making administrative acts in administrative law, requiring administrative organs to follow reasonable and moderate strict requirements in every link of exercising their functions and powers. Starting from the stage of administrative legislation, the legislature should take the principle of proportionality into consideration when formulating administrative regulations and rules, and prudently assess whether the administrative measures set up meet the requirements of the principle of proportionality, so as to avoid excessive interference in social and economic life caused by administrative legislation and hinder the free development of the market. In the link of administrative law enforcement, when administrative organs make specific

administrative acts such as administrative license and administrative punishment, they should carry out the appropriateness, necessity and narrow proportion requirement of the principle of proportion to the end. Taking administrative punishment as an example, the selection of types of administrative punishment and the determination of penalty range should be accurately matched with the nature of the illegal behavior, the severity of the circumstances and the degree of social harm caused, so that punishment should be its responsibility. In terms of administrative remedies, the principle of proportionality also plays an important role. When reviewing administrative acts, administrative reconsideration organs need to conduct a comprehensive review of the original administrative act according to the principle of proportionality, judge whether it has complied with the requirements of the principle of proportionality, and then make a fair decision on whether to maintain, change or revoke the original administrative act on this basis. To provide an effective remedy for the right of administrative counterpart^[9]. In this sense, the principle of proportionality in administrative law is the concrete implementation and vivid extension of the constitutional principle of proportionality in the field of administrative law. It converts the abstract and macro concept of the principle of proportionality in the Constitution into specific and operable norms of administrative behavior, effectively protects the legitimate rights and interests of administrative counterparts from the micro level, and ensures the smooth and orderly operation of administrative power on the track of rule of law.

2 The systematic construction of the principle of proportion under the cross-vision of Constitution and administrative law

2.1 System of proportionality principle in Constitution

The principle of proportionality in the Constitution is like a carefully constructed edifice whose core structure revolves around the intricate relationship between the basic rights of citizens and the power of the state. In the key dimension of the protection of citizens' basic rights, when the state power has to implement restrictions on citizens' rights based on the consideration of public interests, the principle of proportionality in the Constitution plays a crucial role of review and supervision as a strict guardian^[10].

At the same time, in the broad field of the allocation and operation of state power, the principle of proportionality in the Constitution also plays an indispensable role. Among different organs of power, such as legislative organs, administrative organs, judicial organs, etc., in the process of power distribution and exercise, the principle of proportionality must be followed to ensure the efficiency and balance of power operation. For example, in terms of the relationship between legislative power and executive power, the legislature, when formulating laws and regulations, should fully consider the actual ability and needs of the administrative organs to implement laws, so as to avoid giving the administrative organs too much or too little power, resulting in the imbalance of power operation. Similarly, in the process of implementing laws, administrative organs should also respect the legislative intent of the legislature, exercise their powers within the scope of legal authority, and must not act beyond their powers. When judicial organs conduct judicial review of administrative acts, they should also use the constitutional principle of proportionality to judge whether the exercise of power by administrative organs conforms to the constitutional provisions and the requirements of the principle of proportionality, so as to maintain the overall order of the operation of state power and ensure that citizens' basic rights are not infringed in the process of power operation^[11].

2.2 System of proportionality principle in administrative law

The system of proportionality principle in administrative law presents more specific, detailed and diversified characteristics. In the source of administrative legislation, the legislature must take the principle of proportion as an important criterion when formulating administrative regulations, rules and other normative documents. For example, when formulating administrative regulations on market supervision, it is necessary to comprehensively assess whether the regulatory measures set, such as the level of market access threshold and the strength of supervision, conform to the principle of proportionality. Too high a market entry threshold may hinder the market's innovation vitality and fair competition, and overly strict supervision may increase the operating costs of enterprises and inhibit the development momentum of the market. Therefore, the legislature needs to find a balance point in line with the principle of proportionality between safeguarding market order, safeguarding public interests and promoting the free development of the market, so as to ensure that the administrative regulations formulated can effectively achieve regulatory objectives without causing excessive and unnecessary interference in social and economic life^[12].

In the key link of administrative law enforcement, every administrative act made by administrative organs must strictly follow the proportionality, necessity and narrow proportionality requirements of the principle of proportionality. Take the act of administrative license as an example, when setting the conditions of administrative license, the administrative

organ should ensure that these conditions are truly necessary to achieve the objectives of public management. For example, for the application for administrative license to open a catering enterprise, it is reasonable and necessary to require the enterprise to have the necessary health facilities, food safety management system and other conditions, because these conditions are directly related to the public management goal of ensuring public food safety. However, if some additional harsh conditions unrelated to food safety are set up, such as requiring enterprises to lease business premises in specific locations, it may exceed the necessary limit and do not meet the requirements of the principle of proportionality. In terms of administrative penalties, the types and ranges of administrative penalties should be accurately matched with the nature, circumstances and degree of harm of illegal acts. For minor violations, priority should be given to lighter punishment such as warning and small fine; For illegal acts that seriously endanger social public security, severe punishment measures such as revocation of licenses and large fines can be taken according to law to achieve the educational and disciplinary purposes of administrative penalties, and at the same time protect the legitimate rights and interests of administrative counterparts from excessive infringement.

The principle of proportionality also plays a key role in administrative relief. When reviewing the administrative act, the administrative reconsideration organ should conduct a comprehensive and in-depth review of the original administrative act according to the principle of proportionality. If it is found that the original administrative act violates the principle of proportionality in terms of means selection and interest balancing, such as excessive administrative punishment and unreasonable setting of administrative license conditions, the administrative reconsideration organ shall make a decision to change or revoke the original administrative act according to law, and provide timely and effective rights relief for the administrative counterpart. For example, an enterprise due to an accidental minor violation, was imposed a heavy fine by the administrative organ, the administrative reconsideration organ during the examination, if the amount of the fine and the nature of the enterprise's illegal acts, the severity of the circumstances and the harm caused by the obvious disproportionate, in violation of the principle of proportionality, should be adjusted according to law, the amount of the fine. To safeguard the legitimate rights and interests of the administrative counterpart and ensure the fairness and legitimacy of administrative acts.

2.3 The system integration of proportionality principle in the cross-field of Constitution and administrative law

In the broad field of the intersection of constitution and administrative law, the integration of the principle of proportionality system reflects a close relationship of two-way interaction and complementarity. On the one hand, the constitutional principle of proportionality is like a high hanging lighthouse, which provides the fundamental direction and spiritual core for the construction and application of the principle of proportionality in administrative law. In the process of formulation and implementation of the principle of proportionality in administrative law, it must not violate the basic values and requirements of fairness, justice and protection of civil rights contained in the principle of proportionality in the Constitution, and must always take the Constitution as the highest basis to ensure that various systems and practical activities in the field of administrative law are highly consistent with the spirit of the Constitution at the macro level. For example, when stipulating relevant systems for administrative organs to restrict citizens' rights, administrative law must follow the provisions of the principle of proportionality in the Constitution, ensure the appropriateness, necessity and narrow proportionality of restrictive acts, and must not violate the bottom line of civil rights protection defined in the Constitution without authorization.

On the other hand, through a series of specific system design and rich practical activities, administrative law accurately refines and implements the abstract and macroscopic principle of proportion concept in the Constitution into every link of the operation of administrative power. Take administrative litigation as an example, in administrative litigation, the court often uses the principle of proportionality as an important review standard when reviewing the constitutionality of administrative acts. When the administrative counterpart believes that the administrative act of the administrative organ infringes its legitimate rights and interests and brings an administrative lawsuit, the court needs to conduct a comprehensive review of the purpose of the administrative act, the rationality of means and the balance of interests and other aspects according to the principle of proportionality.

3 The application and expansion of the principle of proportion

3.1 Application of proportionality principle in public governance

In the field of public governance, the principle of proportionality helps to coordinate the relationship between multiple governance subjects and balance public interests and individual interests. Governance entities such as governments and social organizations should follow the principle of proportionality when formulating policies and

implementing governance measures. For example, in urban planning, when large-scale demolition and reconstruction is carried out to promote urban development, it is necessary to assess whether the scope of demolition and compensation standards properly promote urban development goals, whether they are necessary means to achieve the goals, and whether there is a balance between the impact of demolition on residents' lives and the benefits brought by urban development, so as to ensure that public governance measures are both effective and reasonable. Protect the lawful rights and interests of residents.

3.2 Application of proportionality principle in the context of digital governance

With the rise of digital governance, the principle of proportionality faces new challenges and opportunities. In digital governance, the government collects and uses citizens' personal data to improve governance effectiveness. At this time, the principle of proportionality requires that the purpose of data collection must be clear and reasonable, the scope of collection should be relevant and necessary to achieve the objectives of governance, and the way of data use should ensure the privacy and security of citizens to avoid excessive collection and abuse.

3.3 Adjustment of the proportionality principle in a state of national emergency

In a state of national emergency, in order to deal with the crisis and maintain national security and social stability, the public power needs to take swift and effective measures. This does not mean, however, that the principle of proportionality can be ignored, but that it should be appropriately adapted to the characteristics of the state of emergency. The actions of public power still need to be appropriate, that is, the emergency measures taken can effectively deal with the crisis; In terms of necessity, due to the urgency of time and the complexity of the situation in a state of emergency, the strictness of the choice of means can be appropriately relaxed, but it is still necessary to choose relatively less damaging means within a reasonable range; In the narrow sense of proportionality, it is necessary to comprehensively consider the public interest brought by emergency measures and the damage caused to citizens' rights, and seek a dynamic balance between crisis response and rights protection. For example, in the emergency rescue of natural disasters, when implementing measures such as traffic control and requisition of materials, the adjusted proportion principle must be followed.

4 The principle of proportion applies to perfect path analysis

4.1 Specification refinement at the legislative level

The legislature should further refine the provisions of the principle of proportionality in the relevant laws and regulations of the Constitution and administrative law. In the Constitution, the specific standards and procedures for the application of the principle of proportionality in different rights limitation situations are clearly defined. In the field of administrative law, the considerations and judgment methods of the principle of proportionality are specified in detail for all kinds of administrative acts. For example, when a unified administrative procedure law is formulated, a special section is provided for the requirement that administrative acts follow the principle of proportionality, so that administrative organs have a clearer legal basis for law enforcement and reduce the arbitrariness of discretionary power.

4.2 Unification of standards at the judicial level

The judicial organs should unify the judicial application standards of the principle of proportionality by issuing guiding cases and judicial interpretations. In the trial of cases involving the principle of proportionality, the specific judgment criteria and weight distribution of appropriateness, necessity and narrow proportionality should be clarified. A case base should be established to classify and sort out typical cases for reference of courts at all levels to ensure the consistency of judgment results when applying the principle of proportionality in similar cases. At the same time, strengthen the professional training of judges in the application of the principle of proportionality, improve the judges' understanding and application of the principle of proportionality, and enhance the fairness and authority of judicial judgment.

4.3 Practice optimization at the administrative level

Administrative agencies should strengthen internal supervision and training to enhance staff's knowledge and ability to apply the principle of proportionality. Establish a mechanism for reviewing the principle of proportionality in administrative acts, and conduct a special assessment of the principle of proportionality before making major administrative decisions or acts. Introduce public participation, fully listen to public opinions in the process of formulating policies and implementing administrative acts, consider the impact of administrative acts on public rights and interests, and ensure that administrative acts comply with the principle of proportionality. In addition, we will strengthen the work

of administrative review, give full play to the role of administrative review in supervising the compliance with the principle of proportionality in administrative acts, and promptly correct administrative acts that violate the principle of proportionality.

5 Conclusion

As an important criterion in the rule of law system, the principle of proportionality plays an irreplaceable role in regulating public power and protecting citizens' rights. From the theoretical level, it clarifies its concept, connotation, legal theory foundation and system construction in the constitution and administrative law, and shows its close connection and interaction in different legal fields. In practical application, the principle of proportionality has room for application in complex situations such as public governance, digital governance, and national emergency, and it continues to expand with social development. However, there are still shortcomings in the current application of the principle of proportionality. Through the refinement of norms at the legislative level, the unification of standards at the judicial level and the optimization of practice at the administrative level, it can effectively improve its application effect, better achieve the goal of the rule of law, ensure that public power runs on a reasonable and moderate track, effectively safeguard the legitimate rights and interests of citizens, and promote social fairness and justice and the stability of the rule of law order.

About the Author

Yujing Song(2000.2-), Female, Han , Jinchang, Gansu, Master of Laws candidate at China University of Political Science and Law. Research direction: Constitutional Law and Administrative Law.

* Corresponding Author: Jianqiang Song(1997.6-), Male, Han , Jinchang, Gansu, currently pursuing a PhD in Law at Fudan University. Research direction: Constitutional Law and Administrative Law.Email: Jianqi_So@outlook.com.

References

- [1] Chen Zheng. Constitutional Adaptation of the nearby enrollment system of Compulsory education from the perspective of Basic Rights [J]. Science of Law,2025,(02):66-82.
- [2] Xiao Xiang, Shao Rui. Analysis of the constitutionality of legal acts from the perspective of the limits of the application of Constitutional Principles [J]. Cultural Journal,2025,(02):170-173.
- [3] Lei Lei. Normative Basis and Methodology Orientation of Proportionality Principle [J]. Forum on Political Science and Law,2025,43(01):3-15.
- [4] Tian Xingjian. Application of proportionality principle in Revision of Criminal Investigation Procedure in Criminal Procedure Law [J]. Journal of Shanghai public security college, 2024 (6) : 80-89. The DOI: 10.13643 / j.carol carroll nki issn2096-7039.2024.06.009.
- [5] Artur M. The Contemporary Significance of the Principle of Proportionality in Tax Law[J].Bia? ostockie Studia Prawnicze, 2021, 26 (4) : 37-51.
- [6] Murray W .The Reception of Structured Proportionality in Australian Constitutional Law[J].Federal Law ,49 Review, 2021 (3) : 352-379.
- [7] Anselmi J A G .The Flag Can Travel but the Constitution Must Ask Permission:How the First Circuit and the District for Puerto Rico Commit to Equal Protection Without Abandoning the Insular Cases Doctrine[J].The University of Miami Inter-American Law Review, 21,53(1):87-158.
- [8] Legal Issues - Comparative Law; Data on Comparative Law Detailed by Researchers at University of Toronto (The Magnetism of Moral Reasoning and the Principle of Proportionality In Comparative Constitutional Adjudication)[J].Politics & Government Week,2019,
- [9] Sung H K . Whether or Not the Provision for Punishment of Unfair Labor Practice Violates the Principle of Proportionality under the Constitution[J].KANGWON LAW REVIEW,2019,5897-132.
- [10] Chul G P .A Study of Constitutional Court's Decision (2011Hun-Ma6598683(consolidated)) on the Internet Game Shutdown System in Youth Protection Act - Focused on the Application of the Principle of Proportionality -[J].DONG-A LAW ,84 REVIEW, 2019 (84) : 37-75.
- [11] Richard S . The Magnetism of Moral Reasoning and the Principle of Proportionality in Comparative Constitutional Adjudication[J]. The American Journal of Comparative Law,2019,67(2):435-475.
- [12] V. A N .Principle of proportionality of constitutional legal responsibility of political parties[J].Law Enforcement Review, 2019, 3 (1) : 33-43.