

A brief analysis of several principles embodied in the German constitutional system and its development context

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Abstract. Different economic conditions, national system, social background, humanities and other factors all influence the formation of law. Today's legal system is mainly divided into civil law system and common law system, civil law system and common law system not only in the legal system, but also the understanding of the field of public law. China's current legal system is more similar to the continental law system, so this article is set in Germany. The historical evolution of Germany in the field of public law largely reflects the legal philosophy and mechanism of the original Roman law system, and the change of its constitution and some legislative considerations reflected in the administrative law are worth further study. Especially on the constitutional interpretation of the law, theoretically China and Germany and other civil law countries are similar. This paper analyzes the formation process, development and basic principles of German constitution and administrative law system from legal and historical perspectives.

Keywords: Germany; Civil law system; Constitution and Administrative Law; The basic principle.

1. Introduction

1.1 Summary

In the process of the development of Germany, the development of its national nation can be described as "fate", and more than a thousand years of history has undergone several major changes in this territory in Germany. The public law system, especially the constitutional system, has gradually precipitated and matured in the collision of different ruling class. With the history of Germany's development, some of the legislative concepts and basic principles that highlight it have been demonstrated and practiced by the "social effects". In modern times, Germany has gradually formed the formation of a "six -law system" based on the Civil Code. As a typical representative of the text and law, Germany has an important impact in Europe and the world. The constitution of the rule of the rule of law in Germany has also gone through several changes. The author mainly targets the German public law system, mainly research on the constitution and administrative law system. It focuses on the reflection and application of legal theory in the German Constitution in the German Constitution, and summarizes the basic principles of the German constitutional system.

1.2 Time background

1.2.1 The German monarchy's recognition of the Roman country

The mainstream ruler in Germany is very agreed with the legal system of the Roman countries. Based on this identity, Roman law has become a legal culture accepted by the feudal monarchs of all Germany. Although Germany's research on Roman France later than neighboring countries, thanks to this official support, many industry scholars are keen to study Roman France, making Germany a wider field of research in Roman France and more significant results.

1.2.2 The rapid development of modern German industrial fields

In the past thirty years after the unity of modern Germany, the economy has developed rapidly, and it has become a first -class power of Europe, and the expansion desire of ruling groups has expanded. Began to abandon the internal and external policies that previously maintained autocratic order and stability, and based on the "national will" and "material constraints" based on the law itself. This change has also stimulated the formation of the current German constitutional system.

2. Overview of the Constitution and Administrative Law

2.1 Concept of Constitution

The so-called constitution refers to the highest legal status or legal effect, stipulates the fundamental system of the country's fundamental system and fundamental tasks, and concentrates the national law of various political forces to compare the relationship and protect citizen rights. The grasp of the constitutional status also helps us to clear the concept of the Constitution: the substantialness of its status is that other legal norms must not be contrary to the constitution, and they all come from the Constitution. The procedural manifestation is that in the procedures for formulation and modification, the formulation and amendments of the constitution are stricter than other laws, and special procedures are needed.

2.2 The concept of administrative law

Administrative law can be described but irresistible. Therefore, we no longer delve into the specific concepts of administrative law, but from the perspective of description -the general term of the legal norms of administrative law on the subject of administrative subjects and powers, behaviors and procedures, illegal and responsibilities and relief.

Another general saying: "Administrative law refers to the various relationships between administrative entities exercising administrative powers and accepting administrative legal system supervision and administrative legal system, and various relationships in the administrative law supervision subject, as well as various relationships that occur within the administrative entity. The general name of legal norms. "

Administrative law adjusts all aspects of people's lives. It has a very strong public law. The core of its meaning lies in "control".

2.3 The relationship between the constitution and administrative law

The relationship between the constitution and administrative law is a topic of controversy in the academic community. The mainstream view is that the Constitution is in the leading position, while administrative law lives in the protagonist and key status, and the administrative law and other departments are operating independently under the premise of the basic concepts, principles and norms of the Constitution. As the core content in the public law system, the constitution and administrative law are often placed in a framework for research and comparison.

2.3.1 Constitution is the foundation of administrative law

As a fundamental law of a country, the Constitution naturally stipulates the organizational operation system of government agencies and other state agencies, and simply indicates the basic value orientation of administrative activities. Some basic principles of the Constitution correspond to it Guidance principles of administrative power. From the perspective of adjustment objects, the constitutional adjustment object is the relationship between citizen rights and state power. As Lenin said: "The Constitution is a paper full of people's rights."

From the perspective of restricting state power, the control of administrative power has undoubtedly become the top priority, because in the normal operation process of a state power, the ties of the administrative power and citizens are the most closely. The boundaries you have. Therefore, the constitution of various countries takes the basic operating rules of the government as one of the main tasks. At the same time as the scope of administrative power is granted, it is also a restriction on administrative power. As the German constitution also reflects the principle of "legal reservation and legal priority", it also exists in many other countries' public law systems.

On the other hand, the guarantee of the basic rights of citizens not only requires us to limit the administrative power, but also the tendency of economic and social life. If the basic rights of citizens in a country are not guaranteed, the regime itself has lost its meaning. Therefore, it is necessary to clarify the boundaries in the legal system and "set the score and stop fighting." The constitutional system

established by the Constitution is our barrier to prevent, and the constitution is also the foundation of the legislative of administrative law.

2.3.2 Administrative law and constitutional influence and promote each other

Under the influence of a large number of ideologies, scientific and technological, and cultural factors, it is unlikely to regulate citizens' daily behaviors if they only rely on the concept of "basic human rights". Therefore, the emergence and development of administrative law is very necessary. The changes in the administrative law structure of the new service administrative and traditional interference in administrative law are in line with the constitutional concept of the country of rule of law. Many norms in administrative law are the specific refinement of "principle" in the constitution. The problem between the government and the citizen that solves the form forms the content of the administrative law.

From this perspective, it is understood that the administrative law is born in the Constitution, but the significance of its public management field is even more significant than the constitution. Administrative law is not completely refined the constitution simply. It should be that the constitution with the highest effectiveness has different degrees of influence on its lower laws, administrative regulations, departmental rules, and standardized documents, and penetrates all aspects of the lower law. The relationship between the constitution and the administrative law is as the poem "comes to the source of the source" in the poem. The constitution is the source of the water, and the administrative rule is the river that moves forward in accordance with the source of the water. The influence of the basic principles of the Constitution on administrative law is to protect the rights of citizens and social organizations. It is also legal restrictions on the harm to the interests of the people, so that individual freedom to obtain a relatively balanced and social security order. However, the purpose of restrictions is still protecting the smooth realization of citizenship rights and freedom, prompting their social power to exercise properly in accordance with the law.

Therefore, the relationship between the Constitution and the administrative law is not the relationship between the "mother and the sub -law", nor is it simply "authorized. The relationship with exercise is a relationship that influences and promotes each other.

2.3.3 Extension of thinking -Chinese scholars' views between the Constitution and Administrative Law

In 2013, a argument on constitutional issues was launched in the Chinese legal community. One of the main points of competition was exactly what the relationship between the Constitution and the administrative law. This issue is more deeply investigated, and it extends from the relationship between the law and the law to the perspective of the political system. The main mission of designing power to restrict power is to study and supervise the technical methods and human rights protection related issues. The anti -constitutional school believes that the fundamental role of constitutional government is not to prevent the abuse of government power, but to examine the rationality of the constitution in the national system and the rationality of its highest status.

Professor Jiao Hongchang vividly pointed out that the dispute with family mother -in -law and mother -in -law is similar to the same work -- "Constitutionalism is nothing more than political science. Don't associate with ideological struggles. Constitutionalism and the country's prosperity have nothing to do, but it is closely related to citizens." After that, most Chinese jurists also have similar views, that is, the status of the constitution cannot be shaken. It is also impossible to question through some surface data.

Through this domestic battle, we can also see the importance of the Constitution, as well as the relationship between the constitution and the administrative law, and promote the relationship between each other.

3. The main principles of German constitutional system

3.1 Principles of the constitutionalization of law

3.1.1 Overview

The so-called constitutionalization of the law is "the interpretation of the law must comply with the rules of the Constitution." It is also called "constitutional explanation." German scholar Simers believe that the constitution is not only the legal rules that the court should apply, At the same time, it constitutes a value system. In particular, the basic rights fully reflect the behavior of these values to guide all state organs. On the basis of basic rights, citizens can integrate into the country's life.

After the far -reaching "Lutter Case" in the development of German law, the mainstream view of Germany believed that the interpretation of the law must meet the value reflected in the basic rights. Principles.

3.1.2 The constitutionalization of civil law

In the relevant constitutional cases, the German Federal Constitution Court discussed the constitutional restraint on civil law. In view of the revision of the Basic Law, some civil law norms still reflect the traditional patriarchal thoughts, and there are conflicts with the principle of equality of men and women stipulated. This has a question: In specific cases, should civil judges apply the constitutional terms of equality between men and women, or continue to apply laws that have not been modified in time? If civil judges must directly apply equality of men and women in the Constitution, this means that the Constitution directly applies to civil lawsuits. Civil law in this area is completely constitutionalized. Or borrow a concept used by the Chinese Constitution, and in this case, the judicialization of the Constitution in the civil field has been realized in this case. This academic dispute also proves the constitutionalization of civil law in the German legal system.

3.2.3 System matching -constitutional review system

The constitutionalization of the law, that is, the constitutional interpretation has an important institutional matching, that is, the constitutional review, and determine whether the law is in line with the substantive spirit of the Constitution through review. In accordance with the constitution and relevant laws, the authorities have reviewed laws and regulations, standardized documents, and behaviors that may violate the constitutional regulations, regulatory documents, and national organs to perform constitutional duties, and to correct the discovery of the constitutional issues. Throughout the situation of countries around the world, the constitutionalization system with constitutional review as the core is the common choice of most countries.

3.2 The principle of institutional security

3.2.1 Overview

The Constitution is the method of the system. Without the support of specific rules, the Constitution will become a tiger who loses teeth. In order to solve this problem better, the German theoretical and practical circles have gradually constructed a set of institutional guarantee dual structures: negative institutional guarantees and positive institutional guarantees. Negative institutional guarantees refer to the legal system that is included in the scope of the constitutional guarantee. Although the legislators can modify it, they must not abandon the basic tradition and essential content of the legal system. Active institutional guarantee refers to the constitutional obligations of the legislators to build a concrete legal system in order to fully protect the basic rights. Here, although the legislators enjoy a greater formation of freedom, they must follow the "core content guarantee principle."

3.2.2 Negative institutional guarantee

The negative system guarantee is also the basic legal system and system of the country through local autonomy and other systems

The architecture is guaranteed. Through studying the German constitutional system, it can be found that in the chapter of "basic rights and obligations", in addition to stipulating the basic rights enjoyed by the people, it also stipulates a different legal system.

For example, Germany's 1919 "Weimar Constitution" stipulated the local autonomy system, civil servant system, university autonomy, and many other legal systems in its second editor of "Germans' basic rights and basic obligations". In addition, in some constitutional provisions, although the words "rights" also appear, in fact, these regulations do not mean simple protection of rights. The true meaning is that the legal system containing these rights is protected by the Constitution. Another example is Article 142 of the "Weimar Constitution" stipulates the basic rights of academic freedom and lectures academic circles, but it is not a basic right in the real sense, but a negative system formed in Germany in Germany Sexual guarantee theory.

3.2.3 Active institutional guarantee

The so-called positive institutional guarantee is to ensure that the constitutional rights legislators must build relevant legal systems to shape the connotation of basic rights and provide institutional support for the protection of basic rights.

In Germany in the 192 and 1930s, parliamentaryism was respected to the extreme law reservation principles to be alienated to be legislators who can unscrupulously restrict or deprive basic rights. Facing the new situation in the world after World War II in 1945, the German academic community restructured the theory of institutional security in the basic rights field, and formed a positive institutional guarantee theory.

3.3 Administrative principles in accordance with the law

The principle of administrative administration in the German constitutional system consists of two parts: the principle of priority and the principle of legal reservation.

3.3.1 Priority of legal priority

The principle of priority of the law mainly refers to the priority of the law on administrative power. In this sense, the principle of priority priority, unconditional and unlimited application of all aspects of administrative activities.

3.2.2 The principle of legal reservation

The basic meaning of the principle of legal reservation is that the administrative organs can only move by the authorization of the law. Legal priority only requires administrative to act in accordance with existing laws, while law reservations actively require the legal basis for administrative activities.

The legal foundation of administrative principles in accordance with the law is the binding power of the current valid legal, and the other is the German Basic Law.

Regulations of Article 20, paragraph 3. This paragraph stipulates: "legislative power is restricted by the constitution, administrative power and judicial power are restricted by law and rights." Violations of this principle will bring such legal consequences: the laws that conflict with the law are invalid.

4. Conclusion

From the German public law system, especially the constitutional system, we can also see that the relationship between the constitution and administrative law has an interaction and an imbalance. In which angle of the interaction between the Constitution and the administrative law alone, many scholars have not discussed this in detail, and through analysis, the author found that one of the main impact channels starts from basic principles. The principle of proportion in administrative law into the principle of constitution is the requirement of modern human rights theory and regulating the development of the Constitution. The German Constitution and Administrative Law system has gone through the "baptism" of multiple historical periods and various politics, which is quite distinctive

and mature. It also has practical significance and unique influence on my country's constitutional system.

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