

Administrative Procedure Laws of the People's Republic of China and Colombia*

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Abstract

The Administrative law enjoys certain “philosophy”, which is summarized in “a set of knowledge—reasoned, arranged in a logical harmonic synthesis, in which they are linked and illustrated between yes—of the Administrative law by his beginning and foundations acquired with the natural light of the reason”. In addition, it is so the science of the Administrative law, “it deals preferably <how> it is the same, while his philosophy takes us after his last one <why> and the last one <why>, being applicable to the classic definition Aristotelian: <*cognitorerum per cause*>”. The Colombian Administrative law, as branch autonomy, begins to appear with the Letter of 1886, which I spend of the federal system a centralist system or of centralism politic and decentralization administrative officer. In the PRC, based on its Constitution, the administrative procedural law was issued in order to ensure an adequate procedure for the purpose of processing to the appropriate authorities, the rights and obligations of citizens under appropriate principles under current standards.

Keywords

Administrative Law, Global Administrative Law, Law, Constitution, Damages

1. Introduction

The Colombian Administrative law, as branch autonomy, begins to appear with the Letter of 1886, which I spend of the federal system a centralist system or of centralism politic and decentralization administrative officer.

The <Administrative thing>, about the Dictionary of the Spain Royal Academy, is “the belonging or relative thing to the administration”, being at the time an expression that refers to “action and effect of administering”,

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but to administer that's, certainly, the set of organisms and persons entrusted of fulfilling the administrative function.

The meanings administrative laws, according to the teacher [Jaime Orlando Santofimio \(2010\)](#), “come from the revolutionary debates concerning the political and legal phonemes and socially from the distribution or division from the power”.

2. Development

For Keith Werhan, Administrative law, as its name suggests, is the law of government administration. “It is the system of general legal principles that lawmakers and judges have devised over the years to legitimate, as well as to control, the actions of administrative agencies. Administrative law prescribes the ground rules for creating administrative agencies; it defines the power of those agencies; it structures the processes of agency decision making; and it shapes the rights of individuals to participate in those processes as well as to challenge agency decisions in court”¹ ([Werhan, 2014](#)).

In Colombia, the processes that go forward before the jurisdiction of the Administrative Contentious thing take as an object the efficiency of the rights recognized in the Political Constitution and the law and the preservation of the law order. In the application and interpretation of the procedure to be observed the constitutional beginning and those of the procedural law. By virtue of the beginning of equality, any change of the jurisprudence on the scope and content of the norm, must be express and sufficiently explained and motivated in the decision that contains it. The one who comes before the Jurisdiction of the Administrative Contentious thing, in fulfillment of the constitutional duty of collaboration for the good functioning of the administration of justice, in the obligation of expiring with the procedural and evidential loads foreseen in the law.

Following teacher N.Y.U. Benedict Kingsbury, define global administrative law as one that includes the mechanisms, principles, practices and social agreements that support and promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring that they comply with the appropriate standards of transparency, participation, making reasoned decisions, and legality, and promoting effective evaluation of the rules and decisions adopted.

According to that definition, those global administrative bodies may also include formal intergovernmental bodies, as well as “informal intergovernmental regulatory networks and coordination arrangements, national regulatory bodies operating in relation to an intergovernmental international regime, hybrid public-private regulatory bodies, and some private regulatory bodies exercising transnational governance functions of specific public importance” ([Kingsbury et al., 2005](#)). This comes within the scope of globalizing forces.

In our America, the integration of law has its origin in the Congress of Panama Amphictyonic 1826, and even from there you can glimpse the five categories of Global Administrative Law, G.A.L., can be explained as follows primarily a right of coordination, articulation and harmonization of legal systems, has five categories comprising provisions of public law, private and mixed public-private law:

- administration based on collective action by transnational networks of cooperation agreements between national regulatory officials;
- administration by formal international organizations;
- administration by private institutions with regulatory functions;
- administration-private hybrid intergovernmental agreements;
- distributed management carried out by national regulators under treated nets or other cooperative arrangements.

The absence of structure making binding decisions and the prevalence of informal cooperation among state regulators is one of the characteristics of transnational networks and coordination agreements; this aspect is important to consider because in many countries, and is the condition of Colombia, international treaties must be approved by public international treaty, but has enforced by simple way of adoption, the rules for foreign entities apply without following the procedure constitutionally appointed as an effect of global administrative law.

It may or may not develop in the framework of an international treaty. In these transnational networks, an important role played by the World Trade Organization, WTO, which is part—of Colombia as founder—member. It should be noted that since the last review of the trade policies of Colombia in 2006, revised in 2012, this country has focused on greater openness and integration with Latin America and the Caribbean and the rest of

¹Werhan, K. (2014). https://books.google.com.co/books/about/Principles_of_Administrative_Law.html?id=-KHuoAEACAAJ&redir_esc=y.

the world, negotiating preferential agreements that have increasing flows of foreign trade and foreign investment.

Here also in transnational networks, also called global public policy networks and coordination arrangements enter different provisions of international private and public organizations.

Another aspect to be considered is that of the so-called “glocalization”, that mixture of local law to global law, generalized by the German sociologist Ulrich Beck, involving the dynamic tension between globalization and localism, and “has given rise the blurring of the <pyramidal image> of a hierarchical state law, being outlined in place collaborative <horizontal networks>”, which give rise to “supranacionalizadoras” practices and a combination of energies, according to Miguel Carbonell, “have divisive effects” and instead of the traditional inverted pyramid, it is creating a <rhombus invested discontinuous> and also a “decoder trend”, it will be very difficult to put in order.

Today, the international administration, exerted by the formal intergovernmental organizations established by a treaty or executive agreement, such as the Security Committee of the United Nations, UN and its Committees, where they “adopt subsidiary legislation, take binding decisions related to individual countries (mostly in the form of sanctions), and even have a direct impact on individuals through targeted sanctions and related list of persons responsible for threats to international peace esteem. Similarly, the United Nations High Commissioner for Refugees has assumed numerous regulatory and other administrative tasks, such as determining refugee status and management of refugee camps in many countries. Other examples are the assessment of global health risks and issuing warnings by the World Health Organization...”.

Here also they enter provisions against terrorism, drug trafficking, money laundering and corruption.

As noted Kingsbury, “in some areas of regulatory administration, such as international security, still stomp the classical view in the sense that global governance is directed towards the behavior of governments to other governments rather than to private actors” (Kingsbury, 2009) although in Colombia, the increasing privatization of international security activities, such as the increasing use of private contractors to carry out traditional state functions as the military occupation of Iraq, or sending Colombian military in Afghanistan retirement.

Almost one might say that these goals are part of this new and growing global legal order, which makes it increasingly bulkier national legal systems. Thus, we find different aspects that are gradually enriching called <new architecture of global governance>, the Global Administrative Law and that will allow us in the future, talk of privatization of public management and a new block of constitutionality private sources, as a result of the joint action of individuals and the state in governance and the exercise of <ius commune> 223, which is us more than the development of so-called <Covenant Global>.

The current state of global law, cannot ignore the advances of American integration, being the nearest to us and with whom we have greater identity and where the continental “glocalization” plays a key role, because our multicultural richness and Peter would like Haberle-multiethnic, coupled with the desire of improving the quality of life of our people, makes the desired integration is likely when the gap of lack of protection of fundamental constitutional rights and cooperation between our nations is exceeded a reality a <desirable future>.

3. The Law

On the occasion of the Reform to the Contentious Administrative Code in Colombia, the new Code, Law 1437 of 2011, has included in his article 3 a clause by the thirteen beginning of the administrative actions, to the following tenor: good faith, speed, coordination, due process, economy, efficiency, equality, impartiality, morality, participation, advertising, responsibility and, transparency.

They add in addition the following rules derived from the law and the doctrine:

- *Decentralization,
- *General interest,
- *Legality,
- *Morality (that turns out to be like new in the Code of 2011, Law 1437) and,
- *Separation of power.

They, logically they complement with the “General beginning of the law”, that being of the natural Law, only they will be listed here for the Colombian case, which they can be common in our comparison.

- The absolute Laws of the personality,
- The abuse of the Laws,

The due process the good faith to be judged,
The equality in the eyes of the law or before the public loads,
The irretroactivity of the Administrative acts,
The obligatory nature of the contracts and,
The respect of the acquired Laws.

In case of the law of administrative procedure of the Popular Republic China and Colombia, we think that the Law China, with 76 articles, possesses a series of similarities with the Colombian one, basically fitted to the mandates of the OECD.

Actually, these similarities and differences, focus on a jurisdiction (in the case of the PRC does not correspond to administrative litigation); a procedure, based on the arguments of the OECD and basic principles, both procedural, and procedural, that illuminate the acting of private subjects involved in the process of recruitment, involving both the State and multinational companies.

It is important to note that in the following articles of the law on administrative procedure People's Republic of China are similar to what is stated in the law Colombia in 1437, 2011, Code of Administrative Procedure and Administrative aspects—CPACA.

Although Colombia is different, since the age of eighteen can present by proxy and in some cases directly administrative actions, citizens, legal persons or other organizations, in the case of the laws of the PRC, they may not sue in relation to the following matters: Those relating to administrative sanctions with fine (administrative police, urban planning, seizure and confiscation of property, administrative measures restricting freedom or sealing of establishments, the refusal of an administrative body to issue a permit or license, when deemed that an administrative body has exceeded the performance of their functions, etc.

High administrative court in China and Colombia, always take into account these conditions to act:

Evidence shall be classified as follows:²

- audio-visual material;
- documentary evidence;
- expert conclusions; and
- material evidence;
- records of inquests and records made on the scene;
- statements of the parties;
- testimony of witnesses.

Always taking into consideration these provisions of due process, operating in Colombia and China:

- abuse of powers;
- erroneous application of the law or regulations;
- exceeding authority; or
- inadequacy of essential evidence;
- violation of legal procedure.

4. Conclusion

The similarities and differences studied lead us to conclude that the inclusion of Colombia to treaties OECD, legislation has been unified and standardized to the point that today, despite the distance and political differences and cultural the law is one on administrative contracts.

References

National People's Congress of the People's Republic of China (2016). *Database of Laws and Regulations*.

http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383912.htm

Werhan, K. (2014).

https://books.google.com.co/books/about/Principles_of_Administrative_Law.html?id=-KHuoAEACAAJ&redir_esc=y

Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The Emergence of Global Administrative Law, 68 *Law and Contemporary Problems*, 15 (Summer/Autumn 2005), p. 2.

Kingsbury, B. (2009). *El nuevo Derecho Administrativo Global en América Latina. Desafíos para las inversiones extranjeras, la regulación nacional y el financiamiento para el desarrollo*. Buenos Aires: Ediciones RAP.

²National People's Congress of the People's Republic of China (2016). http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383912.htm.

- Santofimio Gamboa, J. O. (2010). *La fuerza de los precedentes administrativos en el sistema jurídico del Derecho positivo colombiano* (Vol. 1). Bogotá, D.C., Colombia: Universidad Externado de Colombia.
- Legislative Affairs Office of the State Council P. R. China (1991). *Administrative Procedure Law of the People's Republic of China*. www.wipo.int/edocs/lexdocs/laws/en/cn/cn156en.pdf
- Werhan, K. (2014). *Principles of Administrative Law*. Eagan, Minnesota: West Publishing Company, College & School Division.



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