
CHINA LAW UPDATE

RECORD-KEEPING OF THE ENTIRE ADMINISTRATIVE PENALTY PROCESS: DEVELOPMENT, STIPULATION AND IMPLICATIONS

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I. INTRODUCTION

The development of Chinese administrative law represents one of the most remarkable aspects of legal progress leading to the rule of law in China.¹ The aim of building a comprehensive administrative law system is primarily realized through several major pieces of legislation,² among which the Administrative Penalty Law of the PRC makes the important contribution of bringing administrative penalties under legal control.³ Adopted in 1996, the Administrative Penalty Law underwent its first major revision on Jan. 22, 2021, the revised version expected to come into force on July 15 the same year.⁴ The long-awaited revision responds to problems which emerged in the past 20 years through incorporating scholarly proposals and successful government practices.⁵

¹ See Jianfu Chen, *The Development and Conception of Administrative Law in the PRC*, 16 LAW CONTEXT: A SOCIO-LEGAL J. 72 (1998); and Huaide Ma & Xiangwen Kong, *40 Years of the Rule of Administrative Law: Enhancements, Experience, and Expectations*, 13 FRONTIERS L. CHINA 497 (2018) (a comprehensive introduction to the initial conception and update development of the Chinese Administrative Law).

² These include but are not limited to Xingzheng Qiangzhi Fa (行政强制法) [Administrative Compulsion Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 30, 2011, effective Jan. 1, 2012) (Chinalawinfo); Guojia Peichang Fa (国家赔偿法) [State Compensation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 26, 2012, effective Jan. 1, 2013) (Chinalawinfo); Xingzheng Susong Fa (行政诉讼法) [Administrative Litigation Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 27, 2017, effective July 1, 2017) (Chinalawinfo); Xingzheng Fuyi Fa (行政复议法) [Administrative Reconsideration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 1, 2017, effective Jan. 1, 2018) (Chinalawinfo); Gongwuyuan Fa (公务员法) [Civil Servant Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2018, effective June 1, 2019) (Chinalawinfo); Xingzheng Xuke Fa (行政许可法) [Administrative License Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 23, 2019, effective Apr. 23, 2019) (Chinalawinfo); Xingzheng Chufa Fa (行政处罚法) [Administrative Penalty Law] (promulgated by the Standing Comm. Nat'l People's Cong., Jan. 22, 2021, effective July 15, 2021) (Chinalawinfo).

³ The aim of the Administrative Penalties Law is stipulated in Article 1: "For the purposes of regulating the setting and enforcement of administrative penalties, guaranteeing and supervising the effective exercise of administration by administrative authorities, safeguarding the public interests, maintaining the public order, and protecting the lawful rights and interests of citizens, legal persons or other organizations, this Law is developed according to the Constitution." Xingzheng Chufa Fa (行政处罚法) [Administrative Penalty Law] (promulgated by the Standing Comm. Nat'l People's Cong., Jan. 22, 2021, effective July 15, 2021), art. 1 (Chinalawinfo). See Dingjian Cai, *Introduction to the Administrative Penalty Law of China*, 10 COLUM. J. ASIAN L. 259 (1996) (a concise introduction to the Administrative Penalty Law).

⁴ Minor amendments have also been made to the Administrative Penalty Law in between, respectively in 2009 and 2017.

⁵ Scholars have offered a large number of suggestions in the revision process, many of which have been accepted. *E.g.*, Ma Huaide (马怀德), *Xingzheng Chufa Fa Xiugaizhong de Jige Zhengyi Wenti* (《行政处罚

Among various highlights of the recent revision,⁶ this Note intends to focus on the newly introduced Article 47 of the Administrative Penalty Law. This provision introduces an Entire-process Record-keeping System (the “ERS”) which requires the entire administrative penalty process to be recorded and filed. Section II traces its development from the perspectives of overall design and regional as well as ministerial responses. Section III delineates its content through a closer inspection of Article 47 with the help of relevant regulatory documents. Section IV reveals the potential implications of the ERS from a comparative angle focusing on the relatively recent introduction of police body cameras in Germany and America.

II. DEVELOPMENT OF THE ERS

The ERS should be understood within the general context of Chinese administrative law development, which is marked by two salient characteristics, *i.e.*, top-down guidance and central-local dynamics. Chinese scholars typically characterize the development pattern of Chinese administrative law as top-down and guidance-driven, attributing the rapid progress made in the past 40 years to the cooperative efforts from the Communist Party of China (the “CPC”) and the State Council (the highest authority of state administration in China).⁷ Whereas the CPC drafts the overall top-level design, the State Council carries out specific plans developed from the general design by establishing relevant systems inside the administrative authorities.⁸ These systems, when successful, are often incorporated into the administrative law. Another striking characteristic is the important role played by institutional innovations in local governance. Rules are often distilled from effective local practices and consequently codified in state legislation.⁹

In view of these characteristics, this section intends to introduce the development of the ERS from the perspectives of overall design and regional, as well as ministerial responses, which will give a flavour of top-down guidance

法》修改中的几个争议问题) [*Several Contentious Issues in the Revision of the Administrative Penalty Law*], 4 HUADONG ZHENGFA DAXUE XUEBAO (华东政法大学学报) [JOURNAL OF EAST CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW], 6 (2020). Jiang Mingan (姜明安), *Jingdiao Xike Dazao Liangfa Xiugai Xingzheng Chufa Fa de Shitiao Jianyi* (精雕细刻，打造良法——修改《行政处罚法》的十条建议) [*Shaping a Good Law with Care and Precision: Ten Suggestions for Revising the Administrative Penalty Law*], 5 ZHONGGUO FALU PINGLUN (中国法律评论) [CHINA LAW REVIEW], 1 (2020).

⁶ Major achievements include providing an explicit definition of administrative penalty, clarifying the classification of different means of penalty, expounding the connection between criminal punishment and administrative penalty, introducing, and so forth. *E.g.*, *Xin Xingzheng Chufa Fa de Shida Liangdian* (新《行政处罚法》的十大亮点) [*Ten Highlights of the New Administrative Punishment Law*] 6 ZHONGGUO ZIRAN ZIYUAN BAO (中国自然资源报) [CHINA NEWSPAPER OF NATURAL RESOURCES] (2021), available at https://m.thepaper.cn/baijiahao_10972387.

⁷ *E.g.*, Huaide Ma & Xiangwen Kong, *40 Years of the Rule of Administrative Law: Enhancements, Experience, and Expectations*, 13 FRONTIERS L. CHINA 497, 519–20 (2018).

⁸ *Id.* at 520.

⁹ *Id.* at 523.

and central-local dynamics in the process of Chinese administrative law legislation.

A. Overall Design

The advent of the ERS in Chinese public administration can be traced back to the Resolution of the Central Committee of the CPC on Certain Major Issues Concerning Comprehensively Advancing the Law-based Governance of China (the “2014 CPC Resolution”), issued at the fourth plenary session of the 18th Central Committee of the CPC in October 2014. The ERS was proposed (among others), as measures for promoting “law enforcement in a strict, standardized, impartial, and civil manner,”¹⁰ with the further objective of “thoroughly advancing law-based government administration and accelerating the building of a rule of law government.”¹¹ The 2014 CPC Resolution notably refrains from providing a detailed description of the ERS, or indeed any of the proposed mechanisms, but rather constrains itself to sketching several fields of administrative law enforcement especially in need of an ERS, which not unexpectedly includes administrative penalty.¹² The CPC guideline with regard to the ERS was later incorporated verbatim into the Implementation Outline for Building a Government Ruled by Law (2015-2020) (the “2015 Outline”), which was jointly announced by the Central Committee of the CPC and the State Council in December 2015.¹³

A major development happened in the 31st meeting of the Central Leading Group for Comprehensively Deepening Reforms in December 2016,¹⁴ which passed the Working Plan on Promoting the Pilot Implementations of the Public Announcement System, the Entire-process Record-keeping System and the Major-decisions Legality-review System in Administrative Law Enforcement (the “2017 Working Plan”) prepared by the State Council. As the long-winding

¹⁰ THE COMMUNIST PARTY OF CHINA, DOCUMENTS OF THE FOURTH PLENARY SESSION OF THE 18TH CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA 34 (2015).

¹¹ *Id.* at 28.

¹² *Id.* at 34.

¹³ Fazhi Zhengfu Jianshe Shishi Gangyao (法治政府建设实施纲要(2015-2020年)) [the Implementation Outline for Building a Government Ruled by Law (2015-2020)] (promulgated by CCCPC and St. Council, Dec. 23, 2015, effective Dec. 23, 2015) art. 21 (Chinalawinfo).

¹⁴ The Central Leading Group for Comprehensively Deepening Reforms was a policy formulation and implementation body set up under the Central Committee of the CPC at the third Plenary Session of the 18th Central Committee in November 2013. It was tasked with “designing reform on an overall basis, arranging and coordinating reforms of different sectors, pushing forward reforms as a whole and supervising the implementation of reform plans”. (Zhonggong Zhongyang Guanyu Quanmian Shenhua Gaige Ruogan Zhongda Wenti de Jueding (中共中央关于全面深化改革若干重大问题的决定) [Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform] (promulgated by CCCPC, Nov. 12, 2013, effective Nov. 12, 2013) art. 58 (Chinalawinfo).) The Leading Group was transformed into the Central Comprehensively Deepening Reforms Commission based on the Plan on Deepening Reform of Party and State Institutions released by the Central Committee of CPC in March 2018. (Shenhua Dang he Guojia Jigou Gaige Fangan (深化党和国家机构改革方案) [Plan on Deepening Reform of Party and State Institutions] (promulgated by CCCPC, Mar. 21, 2018, effective Mar. 21, 2018) art. 4 (Chinalawinfo).) The Commission is currently headed by Xi Jinping.

title reads, three systems were selected from a myriad of guiding proposals as concentrations for reform in administrative law enforcement, of which the ERS constitutes a part.¹⁵ Regarding the ERS in particular, the meeting stressed the importance of expanding the scope of its application, regularizing law enforcement procedures, and establishing a filing system which enables the future utilization of records.¹⁶ The guiding remark set the tone for the subsequent development of the ERS and was aptly substantiated in the 2017 Working Plan, which describes the ERS in greater detail from the perspectives of standardizing written records, promoting audio-visual recording, incorporating information technology, and enhancing the utilization of records. In addition, a pilot project was launched, the concerned regions and ministries as well as their respective missions enumerated in an appendix of the 2017 Working Plan. Altogether 32 administrative authorities were involved in the project, 19 of which were assigned with the piloting of all three systems, and 5 with the ERS alone.¹⁷

The results of the piloting project were crystallized in the Guiding Opinions regarding the Comprehensive Implementation of the Public Announcement System, the Entire-process Record-keeping System and the Major-decisions Legality-review System (the “2019 Guiding Opinions”) issued by the State Council in January 2019. The 2019 Guiding Opinions initiated the next phase of the ERS reform, namely massive implementation throughout the country. It contains instructions which are substantially more specified than those in the aforementioned documents.¹⁸ Two years later, in January 2021, the ERS was introduced into the Administrative Penalty Law in Article 47, constituting an important result of the major revision.

¹⁵ As a matter of fact, these systems were later coined as “Three Systems in Administrative Law Enforcement” (行政执法三项制度) in news reports, regulatory documents and academic articles, and jointly promoted. For the purpose of this note, we will only focus on the ERS.

¹⁶ Xi Jinping Zhuchi Zhaokai Zhongyang Quanmian Shenhua Gaige Lingdao Xiaozu Di Sanshiyici Huiyi (习近平主持召开中央全面深化改革领导小组第三十一次会议) [Xi Jinping Hosts the 31st Meeting of the Central Leading Group for Comprehensively Deepening Reforms], XINHUA NET (Dec. 30, 2016), http://www.gov.cn/xinwen/2016-12/30/content_5155048.htm.

¹⁷ Tuixing Xingzheng Zhifa Gongshi Zhidu Zhifa Quanguocheng Jilu Zhidu Zhongda Zhifa Jueding Fazhi Shenhe Zhidu Shidian Gongzuo Fangan (推行行政执法公示制度执法全过程记录制度重大执法决定法制审核制度试点工作方案) [the Working Plan on Promoting the Pilot Implementations of the Public Announcement System, the Entire-process Record-keeping System and the Major-decisions Legality-review System in Administrative Law Enforcement] (promulgated by St. Council, Jan. 19, 2017, effective Jan. 19, 2017) (Chinalawinfo).

¹⁸ Guanyu Quanmian Tuixing Xingzheng Zhifa Gongshi Zhidu Zhifa Quanguocheng Jilu Zhidu Zhongda Zhifa Jueding Fazhi Shenhe Zhidu de Zhidao Yijian (关于全面推行行政执法公示制度执法全过程记录制度重大执法决定法制审核制度的指导意见) [the Guiding Opinions regarding the Comprehensive Implementation of the Public Announcement System, the Entire-process Record-keeping System and the Major-decisions Legality-review System] (promulgated by St. Council, Dec. 5, 2018, effective Dec. 5, 2018) (Chinalawinfo).

B. Ministerial and Regional Implementations

In response to the overall orientation, central ministries and local governments have issued regulatory documents to institute the ERS in the respective fields and regions. Three waves of regulation corresponding to the above phases of state-level development can be clearly observed: The first wave can be traced back to 2015 and consists of leading trials which stemmed from the general reference to the ERS in the 2014 CPC Resolution and the 2015 Outline. The second wave took place in 2017, as administrative authorities appointed to the pilot project endeavored to devise a workable ERS mechanism, in addition to which many other local governments undertook the task voluntarily. The year 2019 witnessed a burst of ERS regulations shortly after the promulgation of the Guide Opinions, resulting in the implementation of the ERS in most ministries and regions.

The above developmental pattern shows a dynamic interaction between state-level overall policy design and regional, as well as ministerial implementation. Whereas the overall policy guides the general direction of the reform, the regional and ministerial trials substantiate it by furnishing abstract guidelines with concrete instructions gathered from practice.

Several examples should suffice to illustrate this interaction. An influential state-level pioneer in the first wave was the Ministry of Public Security, which published the Working Regulation on the Audio-visual Recording in On-site Law Enforcement by Public Security Authorities (the “2016 Police Audio-visual Regulation”) in June 2016, with the purpose of instituting the ERS proposed by the 2014 CPC Resolution.¹⁹ The regulation stipulates the application of audio-visual devices, including police body cameras, for non-stopping recording of the entire process of police on-site law enforcement, as well as general principles concerning record management.²⁰ In general, early trials were observed and reported by the Ministry of Justice, with a focus on collecting workable mechanisms and manifest problems, as exemplified by a news report on the trial implementation of the ERS in Inner Mongolia in 2015.²¹ These trials motivated the eventual initiation of the pilot project, for despite rendering preliminary effects, they revealed problems such as discrepancy in standards and procedure, thus necessitating a pilot project with the intention of crystallizing replicable and generalizable modes of implementation, as

¹⁹ Gong'an Jiguan Xianchang Zhifa Shiyinpin Jilu Gongzuo Guiding (公安机关现场执法视音频记录工作规定) [the Working Regulation on the Audio-visual Recording in On-site Law Enforcement by Public Security Authorities] (promulgated by Min. of Public Security, June 14, 2016, effective July 1, 2016) (Chinalawinfo).

²⁰ See *infra* Section IV (B) for a more detailed discussion of audio-visual recording in police forces.

²¹ Neimenggu Zizhiqu Tansuo Jianli Xingzheng Zhifa Quanguocheng Jilu Zhidu 5 ge Tingjv he Diqu Xianxing Shidian (内蒙古自治区探索建立行政执法全过程记录制度5个厅局和地区先行试点) [Inner Mongolia Autonomous Region Explores in Establishing the Entire-process Record-keeping System in Administrative Law Enforcement by Piloting in 5 Administrative Organs and Regions], MOJ.GOV.CN (July 13, 2015), http://www.moj.gov.cn/organization/content/2015-07/13/561_225599.html.

characterized by the State Council in explaining the legislative background of the 2017 Working Plan.²²

The central-local interaction is particularly distinct in the piloting phase in 2017, where the Legislative Affairs Office of the State Council established liaisons with piloting entities and conducted on-site inspections,²³ aiming to gather information conducive to the formation of a general mechanism.²⁴ The results of the pilot project were encapsulated in a news report from the Ministry of Justice, which acknowledged its success and forecast the nationwide implementation later affirmed by the Guiding Opinions.²⁵ One may thus view the Guiding Opinions as a crystallization of the piloting experiences, especially regarding the additional details absent in the 2017 Working Plan. An example serves to support this interpretation. In the pilot implementation, the city of Guangzhou identified the reluctance of law enforcement officers as a major impediment of promoting audio-visual recording. Such reluctance was reported to have resulted from the widespread misunderstanding that the ERS required each and every step of law enforcement to be audio-visually recorded, and that all audio-visual records had to be filed as evidence in administrative litigation. In addition, the financial burden incurred in purchasing the recording devices constituted a realistic obstacle for less developed areas.²⁶ The elaboration, or indeed alteration of standards for audio-visual recording in the 2019 Guiding Opinions as compared with the 2017 Working Plan constitutes a targeted response towards the above-mentioned practical problems, which are

²² Guowuyuan Fazhiban Fuzeren jiu Guowuyuan Bangongting Guanyu Yinfu Tuixing Xingzheng Zhifa Gongshi Zhidu Zhifa Quanguocheng Jilu Zhidu Zhongda Zhifa Jueding Fazhi Shenhe Zhidu Shidian Gongzuo Fangan de Tongzhi Da Jizhe Wen (国务院法制办负责人就《国务院办公厅关于印发推行行政执法公示制度执法全过程记录制度重大执法决定法制审核制度试点工作方案的通知》答记者问) [Person in Charge in the Legislative Affairs Office of the State Council in Answer to the Reporters' Questions Regarding the General Office of the State Council's Announcement on Publishing the Working Plan on Promoting the Pilot Implementations of the Public Announcement System, the Entire-process Record-keeping System and the Major-decisions Legality-review System in Administrative Law Enforcement], MOJ.GOV.CN (Feb. 10, 2017), http://www.moj.gov.cn/Department/content/2017-02/10/596_203362.html.

²³ The Legislative Affairs Office of the State Council was dissolved in 2018, its functions absorbed by the Ministry of Justice. (Shenhua Dang he Guojia Jigou Gaige Fangan (深化党和国家机构改革方案) [Plan on Deepening Reform of Party and State Institutions] (promulgated by CCCPC, Mar. 21, 2018, effective Mar. 21, 2018) art. 32 (Chinalawinfo).)

²⁴ Xingzheng Zhifa Sanxiang Zhidu Shidian Gongzuo Lianluoyuan Huiyi zai Beijing Zhaokai (行政执法三项制度试点工作联络员会议在北京召开) [Liaising Meeting on the Pilot Project of the Three Systems in Administrative Law Enforcement Held in Beijing], MOJ.GOV.CN (Apr. 11, 2017), http://www.moj.gov.cn/organization/content/2017-04/11/561_225521.html.

²⁵ Zhuazhu Guifan Xingzheng Zhifa de Niubizi Xingzheng Zhifa Sanxiang Zhidu Shidian Shouguan (抓住规范行政执法的牛鼻子 行政执法三项制度试点收官) [Focusing on the Primary Task of Standardizing Administrative Law Enforcement: the Pilot Project of the Three Systems in Administrative Law Enforcement Successfully Concluded], MOJ.GOV.CN (Jan. 11, 2018), http://www.moj.gov.cn/organization/content/2018-01/11/561_225475.html.

²⁶ Xing Xiang (邢翔), Quanmian Tuijin Xingzheng Zhifa Sanxiang Zhidu Xiang Zongshen Fazhan yi Guangdongsheng Guangzhoushi wei Li (全面推进行政执法三项制度向纵深发展——以广东省广州市为例) [The Comprehensive Promotion of the In-depth Development of the Three Systems in Administrative Law Enforcement: the Example of the City of Guangzhou in Guangdong Province], 8 ZHONGGUO SIFA (中国司法) [JUSTICE OF CHINA] 62 (2019).

conceivably not particular to Guangzhou. First, a subtle change of attitude towards audio-visual recording is expressed through the modification of “promoting (推行) audio-visual recording”²⁷ into “regulating (规范) audio-visual recording.”²⁸ Secondly, the 2019 Guiding Opinions stresses the subsidiarity of audio-visual recording, a qualification lacking in the 2017 Working Plan. Thirdly, taking the regional disparity in economic development into consideration, the 2019 Guiding Opinions expressly encourages frugality and condemns insensible uniformity (一刀切) regarding the installation of recording devices.²⁹

The above example shows how regional piloting makes a profound contribution by influencing central policies, yet one would be mistaken to conceptualize such influence as the *sole* channel effecting a contribution. Commendable implementation methods emerging out of the pilot project can also be shared between administrative authorities through direct communication (*i.e.*, meetings or inquiries), especially when a platform is present to disseminate information on exemplary cases. The Ministry of Justice functioned as such a platform in the pilot project by investigating and reporting different modes of implementation. For instance, relatively extensive coverage was given to the Shenyang mode of establishing digital platforms and compiling standard handbooks,³⁰ which could lead to further inquiry and eventual adoption by other regions.

The relationship between the third-wave implementation and the consequent national-level policy development, *i.e.*, the eventual incorporation of the ERS in the Administrative Penalty Law, is admittedly less apparent; yet a road-paving effect should be easily conceivable considering the nationwide scale of the third-wave implementation. By and large, the journey of the ERS into the Administrative Penalty Law illustrates an emphasis on top-level design and central-local cooperation, which has yielded fruitful results in a relatively efficient manner.

III. INCORPORATION OF THE ERS IN THE ADMINISTRATIVE PENALTY LAW

The ERS is incorporated in Article 47 of the Administrative Penalty Law as follows: “An administrative authority shall record the initiation, investigation and evidence collection, review, decision, service, enforcement,

²⁷ *Supra* note 17 at point 2 (推行音像记录) under a sub-section entitled “the Entire-process Record-keeping System of Law Enforcement” (执法全过程记录制度) in Section “Piloting Tasks” (试点任务).

²⁸ *Supra* note 18 at art. 8 (规范音像记录).

²⁹ *Supra* note 18 at art. 8. *See infra* Section III(B) for a more detailed discussion on regulations regarding audio-visual recording in the 2017 Working Plan.

³⁰ Liaoningsheng Shenyangshi Gongshang Xingzheng Guanlijv Jianli Yibiaozhun Liangpingtai Quanjian Tuijin Zhifa Quanguocheng Jilu Zhidu Jianshe (辽宁省沈阳市工商行政管理局建立“一标准两平台”全面推进执法全过程记录制度建设) [Bureau of Administration for Commerce and Industries in the City of Shenyang, Liaoning Province, Establishes “One Standard, Two Platforms” for the Comprehensive Promotion of the Entire-process Record-keeping System in Law Enforcement], MOJ.GOV.CN (Dec. 8, 2017), http://www.moj.gov.cn/Department/content/2017-12/08/609_224793.html.

and other information on an administrative penalty in the form of text, audio and video, and other forms according to the law, and keep them for filing and safekeeping.”³¹ This provision articulates a three-fold standard regarding the ERS in administrative penalties, consisted of the object of recording, the means of recording, and the safekeeping of records.

Several general remarks before a detailed explanation of each element: By enumerating all stages of administrative penalty enforcement as mandatory objects for recording and stipulating the safekeeping thereof, Article 47 appears to place an unrealistic burden on administrative authorities. However, this supposed burden is mitigated from two respects. Foremost, since the Administrative Penalty Law merely concerns administrative penalties, Article 47 regulates but a limited part of potential circumstances in which the ERS may be brought into force. This is certainly a far cry from the initial plan of introducing the ERS as a sweeping reform targeting administrative law enforcement in general. Further, Article 47 leaves great room for flexibility regarding the means of recording and filing. It is therefore possible for different regions to implement the ERS as suitable for the respective economic conditions. Overall, Article 47 may be considered a cautious advance in comparison with the ambitious agenda set forth by the administrative branch. The realization of the ERS is still highly dependent on detailed regulations issued by administrative authorities.

A. Object of Recording: Entire Process of Administrative Penalty Enforcement

Article 47 enumerates different stages of administrative penalty enforcement as objects of recording, *i.e.*, initiation, investigation and evidence collection, review, decision, service, enforcement, and other information on an administrative penalty, thereby regulating the entirety of the enforcement process. It is worthy noting that different stages of administrative enforcement typically give rise to different problems, which calls for closer analysis of the role of the ERS in each stage. Rather than conducting a stage-by-stage analysis, this Note will focus on two stages identified by the 2019 Guiding Opinions as prone to incite disputes, *i.e.*, the stage of investigation and evidence collection and that of review and decision (which involves the notification of rights and administrative hearings).³²

In the stage of investigation and evidence collection, the ERS requires that law enforcement officers make and file standardized and detailed written records containing the identity of the officers present and a list of gathered evidence, which should be signed by the concerned parties (and witnesses if

³¹ Xingzheng Chufa Fa (行政处罚法) [Administrative Penalty Law] (promulgated by the Standing Comm. Nat'l People's Cong., Jan. 22, 2021, effective July 15, 2021), art. 47 (Chinalawinfo).

³² *Supra* note 18 at art. 8.

required).³³ One salient effect of implementing the ERS in this stage is that administrative authorities will be led to preserve evidence properly and draw responsible conclusions therefrom. Scholars have accused Chinese administrative authorities of a certain lack of awareness with regard to evidence preservation, which constitutes an important cause of administrative disputes.³⁴ This accusation is further confirmed by empirical results showing “insufficiency in primary evidence” as the primary ground for revoking administrative decisions in litigation, accounting for roughly half of all revocations,³⁵ though altogether six grounds are stipulated in the Chinese Administrative Litigation Law.³⁶

Another example concerns the stages of review and decision, or rather an important step in between: the notification of rights and administrative hearings. The Administrative Penalty Law stipulates that the concerned parties should be notified of the content of the administrative penalty to be given, the facts, reasons, and basis therefore, and the lawful rights to state, defense, and request hearings before a penalty is decided.³⁷ An administrative authority must fully hear and review the opinions of the concerned parties should the right of statement and defense be exercised or a hearing be requested by an entitled party.³⁸ A decision on administrative penalty shall not be made without observing the aforementioned rules in prior.³⁹ These provisions emphasize the protection for procedural rights of concerned parties, which is widely criticized as insufficient in Chinese administrative law. The ERS can therefore be conceived as an auxiliary legal device safeguarding the realization of such procedural stipulations.

³³ Shen Fujun (沈福俊), Chen Yuefeng (陈越峰) and Xu Xiaodong (徐肖东), *Xingzheng Zhifa Quanguocheng Jilu Zhidu Yanjiu* (行政执法全过程记录制度研究) [Research on the Entire-process Record-keeping System in Administrative Law Enforcement], 6 ZHENG FU FA ZHI YAN JIU (政府法制研究) [RESEARCH ON LAW-BASED GOVERNMENT] 1, 17 (2016).

³⁴ *Id.* at 18.

³⁵ Tiantian Zhou (周甜甜), *Xingzheng Susong Zhong Zhuyao Zhengjv Buzu Qingxing Rending Wenti Tanxi yi 283 Fen Caipan wei Zhongxin* (行政诉讼中“主要证据不足”情形认定问题探析——以283份裁判为中心) [Research into the Application of “Insufficiency in Primary Evidence” in Administrative Litigation Basis on 283 Judgments] (June 12, 2020) (unpublished J.M. thesis, Hunan Normal University) (on file with cnki.net). Admittedly, another important reason causing this phenomenon is that “insufficiency in primary evidence” practically functions as a blanket provision due to lack of a clear evidence standard in Chinese administrative litigation. Yet governmental remissness in handling evidence undeniably plays a part.

³⁶ “Where the alleged administrative action falls under any of the following circumstances, a people’s court shall enter a judgment to entirely or partially revoke the alleged administrative action, and may enter a judgment to require the defendant to take an administrative action anew: (1) Insufficiency in primary evidence. (2) Erroneous application of any law or regulation. (3) Violation of statutory procedures. (4) Overstepping of power. (5) Abuse of power. (6) Evident inappropriateness.” *Xingzheng Susong Fa* (行政诉讼法) [Administrative Litigation Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 27, 2017, effective July 1, 2017), art. 70 (Chinalawinfo).

³⁷ *Xingzheng Chufa Fa* (行政处罚法) [Administrative Penalty Law] (promulgated by the Standing Comm. Nat’l People’s Cong., January 22, 2021, effective July 15, 2021), art. 44 (Chinalawinfo).

³⁸ *Id.* at art. 45.

³⁹ *Id.* at art. 62.

B. Means of Recording: Textual and Audio-visual

Article 47 uses notably broad language with regard to means of recording, providing that records should be made “in the form of text, audio and video, and other forms according to the law.” Since there are currently no laws or regulations stipulating forms other than textual or audio-visual recording, possible methods of recording essentially remain dual. The 2019 Guiding Opinions offers detailed instructions as to the implementation of these methods, which provide necessary assistance for interpreting the article.

Written records are defined as records in the form of paper or electronic documents in the 2019 Guiding Opinions. The key to perfecting written records is identified as standardizing expressions and compiling model documents, especially regarding the important matters and crucial stages of administrative law enforcement. The Guiding Opinions proceeds to outline a three-level system to standardize written records. Firstly, the Ministry of Justice is to be responsible for drafting the fundamental standards for uniform law enforcement documents; secondly, different state ministries are to formulate model documents applicable in the respective functional departments based on the fundamental standards; thirdly, local governments can improve the regional law enforcement documents on the basis of the aforementioned standards and models and incorporate possible region-specific elements.⁴⁰

In comparison to the perfection of written records, whose primary objective resides in the standardization of a traditional system of record-keeping, the audio-visual records pose a greater challenge because it involves more complicated technical details, as well as a greater risk of infringing personal rights. The 2019 Guiding Opinions provides for a more sophisticated regulation as regards audio-visual recording. It is defined as recording enabled by recording devices such as photographic cameras, audio recorders, video cameras, body cameras and video surveillance. As indicated earlier in the Note,⁴¹ the 2019 Guiding Opinions basically positions audio-visual recording as a subsidiary instrument which is discouraged when written records suffice. Two situations are distinguished in which audio-visual recording is recommended or even necessary. Firstly, in administrative law enforcement procedures prone to incite disputes, such as on-site law enforcement, investigation and evidence collection, administrative hearings, as well as service by delivering administrative decisions to the place of residence and by publication, the application of audio-visual recording is generally encouraged, yet the decision should be made on a case-to-case basis on account of the actual situation. Secondly, in on-site law enforcement activities and law enforcement sites concerning instances directly related to personal freedom, physical well-being, and major property rights, such as the seizure and impoundment of

⁴⁰ *Supra* note 18 at art. 7.

⁴¹ *See supra* Section II(B).

properties and compulsory demolition, audio-visual recording of the entire process should always be implemented.⁴²

In sum, a sense of proportionality is clearly behind the guidelines regulating the use of audio-visual recording. In addition to the application, this sense of proportionality is also observable in rules guiding the purchase of recording equipment. The 2019 Guiding Opinions promotes frugality in purchasing recording devices and constructing facilities embedded with recording functions, underlining the importance of “spending as necessary” both in terms of the quantity and of the functions of recording equipment, as well as the necessity of taking regional economy into account.⁴³

Last but not least, guidelines as to the standardization of audio-visual recording are also provided in the 2019 Guiding Opinions, according to which the distribution, use, and management of recording devices, the contents, filing, and application of records, as well as the language and behavior of law enforcement officers when using the devices, should all be subject to a certain degree of standardization.⁴⁴

C. *Management of Records: Methods and Further Applications*

Article 47 also provides a general regulation on the management of records, stipulating that they should be kept “for filing and safekeeping.” The 2019 Guiding Opinions again facilitates a more substantiated understanding of the provision. It emphasizes the necessity of abiding by laws and regulations on archiving, especially the special regulations protecting national secrets, trade secrets, and privacy. More importantly, it explicitly promotes digitized filing systems supplemented with digital certificates or signatures, with the purpose of realizing the convenient preservation of records and their protection against falsification without excessive expense. Further, it is expected that the digitized filing technology could enable the written and audio-visual records of the same individual to be stored under the same folder.⁴⁵ The relatively high expectations on the filing and safekeeping of records are essentially aimed at further applications. In addition to their traditional evidential and publicity functions, records may play a part in law enforcement supervision and assessment, as well as improving the social credit system. Even profounder implications are envisioned as regards big data technology: Records can be compiled and analyzed for weaker links of administrative law enforcement, so as to provide administration legislation and policy development with both specific targets and empirical support.⁴⁶ Further innovative applications have been suggested by scholars, including the possibility of recommending similar

⁴² *Supra* note 18 at art. 8.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Supra* note 18 at art. 9.

⁴⁶ *Supra* note 18 at art. 10.

case files to law enforcement officers for the purpose of guiding discretionary decisions.⁴⁷

IV. IMPLICATIONS OF THE ERS

Whereas the ERS as a whole may be considered a Chinese phenomenon, its basic elements, *i.e.*, written and audio-visual records, have long found their way into many other jurisdictions. While written records represent a traditional form of administrative record-keeping, audio-visual recording is a relatively novel notion with on-going controversy. This section intends to first introduce the implications of the ERS as understood by Chinese academics, and then present a comparative picture concentrating on the application of audio-visual recording through police body cameras in Germany and America, thereby placing the discussion of the ERS in a broader perspective.

A. *The ERS in China: Objectives and Implications*

In a press conference following the promulgation of the 2017 Working Plan, the State Council Legislative Affairs Office answered questions as to the background and objectives of the pilot project. The project is said to be targeted towards the much-complained problems of administrative law enforcement, including a lack of standards, inefficiency, a negative impact on the business environment, and the infringement of the interests of concerned parties. The primary objective of the ERS lies accordingly in the standardization of administrative procedures, with a sideline emphasis on the importance of law enforcement data, which should be collected and analyzed to facilitate the improvement of policy decisions and the supervision of administrative powers.⁴⁸ These objectives are crucial to understanding the general orientation of the ERS, which should become clearer in a comparative picture.⁴⁹

The ERS is warmly received both in practice and in the academic world. During an interview in September 2020, the director of the Bureau for Coordination and Supervision of Administrative Law Enforcement of the Ministry of Justice affirmed the positive achievements of the implementation of the ERS, claiming an obvious improvement in the standardization, and in turn, fairness and civility of law enforcement. The application of audio-visual recording in situations prone to incite disputes was reported to have proven particularly conducive to the reduction of resistance against law enforcement, especially instances involving the use of violence.⁵⁰ Scholars also tend to view

⁴⁷ Yuan Xueshi (袁雪石), *Xingzheng Zhifa Sanxiang Zhidu de Beijing Linian he Zhidu Yaoyi* (行政执法三项制度的背景、理念和制度要义) [*The Background, Philosophy and Essentials of the Three Systems in Administrative Law Enforcement*], 2 ZHONGGUO SIFA (中国司法) [JUSTICE OF CHINA] 40, 45 (2019).

⁴⁸ *Supra* note 22.

⁴⁹ *See infra* Section IV(B).

⁵⁰ Quannian Tuixing Xingzheng Zhifa Sanxiang Zhidu Jinyibu Tuijin Yanghe Guifan Gongzheng Wenming Zhifa (全面推行行政执法“三项制度”进一步推进严格规范公正文明执法) [Comprehensively Promoting the Three Systems in Administrative Law Enforcement to Further Promote Law Enforcement in a

the ERS in a positive light. For instance, standardized written records are said to have the potential for tightening up possible gray areas susceptible to inappropriate exercise of discretion.⁵¹ Audio-visual recording is supposed to have psychological effects of promoting accountability on the part of law enforcement officers and compliance for concerned parties.⁵² The proper filing of such records promises evidential and informational benefits.⁵³ On the other hand, problems have also been identified which hinder the realization of the ERS, including a lack of coordination between administrative authorities, a shortage of matching facilities, workforce, and mechanisms, etc.⁵⁴

In conclusion, it is clear that despite the active acknowledgement of perceived benefits, there is a lack of serious empirical study into the factual influence of the ERS in China, as well as an overall limitedness as regards perspective. That is to say, in concentrating on the possible effects on administrative law enforcement, scholars and policy makers seem to have neglected the potential infringement of the concerned parties' right of privacy. It is therefore essential to introduce the discussions surrounding similar mechanisms in other jurisdictions for the purpose of rendering a completer picture of the ERS.

B. *A Comparative Perspective: Police Body Cameras in Germany and America*

A comprehensive comparison regarding the standardization of written records, the implementation of audio-visual recording, and the utilization of records is not possible in this Note. I will instead focus on the audio-visual recording, which is arguably the more controversial instance, and rather the most controversial thereof - police body cameras. First adopted nationwide in Britain in 2007,⁵⁵ police body cameras have quickly proliferated across major jurisdictions throughout the world in the past decade, yet always accompanied with stark controversy as to its actual effect, and the delicate balance between the supposed gains and the sacrifice of privacy. This sub-section plans to illustrate the above two aspects with the examples of America and Germany,

Strict, Standardized, Impartial, and Civil Manner], MOJ.GOV.CN (Sept. 21, 2020), http://www.moj.gov.cn/organization/content/2020-09/21/xwdt1_3256945.html.

⁵¹ Xie Zhiyong (解志勇) and Wang Xiaoshu (王晓淑), *Xingzheng Zhifa Sanxiang Zhidu Fazhi Zhengfu Jianshe de Jiasuqi he Wendingqi* (行政执法三项制度:法治政府建设的加速器和稳定器) [*The Three Systems in Administrative Law Enforcement: the Propeller and Stabilizer of Building a Law-based Government*], 2 ZHONGGUO SIFA (中国司法) [JUSTICE OF CHINA] 47, 49 (2019).

⁵² *Supra* note 47 at 43.

⁵³ Zhang Zhiyuan (章志远), *Xingzheng Zhifa Sanxiang Zhidu de Sanchong Fazhi Yiyi Jiedu* (行政执法三项制度的三重法治意义解读) [*Interpretation of the Three-fold Significance of the Three Systems in Administrative Law Enforcement on the Rule-of-law*], 2 ZHONGGUO SIFA (中国司法) [JUSTICE OF CHINA] 54, 55 (2019).

⁵⁴ *Supra* note 50.

⁵⁵ POLICE AND CRIME STANDARDS DIRECTORATE, U.K. HOME OFFICE, GUIDANCE FOR THE POLICE USE OF BODY-WORN VIDEO DEVICES (2007), https://cdn.shopify.com/s/files/1/0085/1197/9567/files/Body_Camera_UK_Guidance_for_Police_Use_of_Body_Worn_Video.pdf?449.

both of which have widely adopted police body cameras, albeit with diametrical purposes and legislative measures.

Scientifically speaking, little is guaranteed about the actual influence of police body cameras.⁵⁶ In America, different studies have rendered diametrical results.⁵⁷ Various practical limitations and policy considerations delimiting the actualized effects have been outlined by scholars.⁵⁸ In Germany, while the Hessen pilot project promises a generally positive prospect, scholars have called into doubt the plausibility of its analysis and interpretation of data.⁵⁹ However, the lingering skepticism has not wavered the governments' determination to promote police body cameras, as is manifest through the unhindered proliferation of these devices in different states. According to the U.S. Department of Justice's Bureau of Justice Statistics, 47 percent of the 15,328 general-purpose law enforcement agencies in the United States had acquired body-worn cameras in 2016.⁶⁰ Similarly, almost all states in Germany have either adopted police body cameras, or started a trial program in preparation for future adoption.⁶¹

Although police body cameras have made its way into both countries, the motivations have been fundamentally different. The introduction of body cameras into the U.S. police force is commonly conceived as an aftermath of the fatal shooting of Michael Brown in 2014, which aroused a wide-spread public sentiment for the installation of body cameras to improve police accountability.⁶² In the same spirit, some scholar traces the installation of police body cameras to a federal case where the New York Police Department's widespread and aggressive use of stop-and-frisks was found in violation of civilians' constitutional rights.⁶³ The essential motivation is the same in both accounts: Body cameras are installed to protect citizens against potential misuse

⁵⁶ See generally JENS ZANDER, BODY-CAMS IM POLIZEIEINSATZ: GRUNDLAGEN UND EINE META-EVALUATION ZUR WIRKSAMKEIT [BODY-CAMS IN POLICE USE: GROUNDWORK AND A META-EVALUATION OF EFFECTIVENESS] (2016).

⁵⁷ E.g., Emilie Eaton, *In San Antonio, Body Worn Cameras on Police Appear to Be Cutting Complaints* (Feb. 19, 2018, 8:38 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/In-San-Antonio-body-worn-cameras-on-police-12625803.php> (positive comments on police body cameras); Peter Hermann, *Police Officers with Body Cameras Are As Likely to Use Force As Those Who Don't Have Them* (Oct. 20, 2017), https://www.washingtonpost.com/local/public-safety/police-body-camera-study-finds-complaints-against-officers-did-not-drop/2017/10/20/4ff35838-b42f-11e7-9e58-e6288544af98_story.html (pessimistic evaluation of police body cameras).

⁵⁸ Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1399–1421 (2018).

⁵⁹ *Supra* note 56 at 52–53.

⁶⁰ Shelley S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies, 2016*, Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/bwclea16.pdf> (last visited Apr. 26, 2021).

⁶¹ *Einsatz sogenannter Bodycams bei den Polizeien des Bundes und der Länder [Implementation of the So-called Body Cameras in the Federal and State Police Forces]*, Deutscher Bundestag, <https://www.bundestag.de/resource/blob/568224/c28954e299e3cc9293d859af1e53092e/WD-3-219-18-pdf-data.pdf> (last visited Apr. 26, 2021).

⁶² Mary D. Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 ALA. L. REV. 395, 407–410 (2016).

⁶³ *Supra* note 58 at 1364.

of violence from police officers. The situation in Germany, on the other hand, is diametrical. There the unequivocal focus of body camera use is the self-protection of police officers, and in some states, also the protection of third-parties. Some police departments even mention the “equality of arms” as a justification, for police officers are constantly filmed by concerned parties using smartphones. The hindrance of police violence or promotion of transparency are at most by-products left out by the legislators.⁶⁴

What is even more interesting is the two country countries different attitudes towards the importance of personal privacy relative to the use of police body cameras, and the corresponding measures taken. A conspicuous characteristic of the German debate on police body cameras is the tension between the promotion of the aforementioned policy goals and the infringement of privacy, or more precisely, of the Right of Information Self-determination (das Recht auf informationelle Selbstbestimmung). This tension is especially prominent given that police body cameras usually record videos in the close vicinity of concerned parties, who are often in a worked-up state.⁶⁵ In view of the tension and the principle of proportionality, a Principle of the Minimization of Data (Grundsatz der Datenminimierung) is proposed. Following from this principle, the circumstances allowing for the activation of body cameras should be clearly stipulated and rigorously restricted, additional functions such as sound recording in addition to filming should be closely examined, and the time for deletion, as well as the range of personnel allowed to review the records whilst stored, should also be subject to clear stipulation.⁶⁶ For instance, with regard to the circumstances of filming, an article was added to the Law on Public Safety and Order in State Hessen,⁶⁷ providing that recording is only allowed in public places when there is a need for the identification of a person by law, and that such recording is necessary for the protection of a police office or a third party against a danger for body, life, and freedom.⁶⁸ In addition, the application of police body cameras in private spheres, though academically discussed, is prohibited by the German constitution *de lege lata*,⁶⁹ and public display of recordings is obviously unwarranted.

⁶⁴ Dr. Mario Martini, David Nink and Michael Wenzel, *Bodycams zwischen Bodyguard und Big Brother: Zu den rechtlichen Grenzen filmischer Erfassung von Sicherheitseinsätzen durch Miniaturkameras und Smartphones* [Body Cameras Between Bodyguard and Big Brother: On the Legal Boundaries of Filming Security Operations Through Miniature Cameras and Smartphones], 24 NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT - EXTRA [NEW JOURNAL FOR ADMINISTRATIVE LAW - EXTRA] 1, 4–5 (2016).

⁶⁵ Dr. Matthias Lachenmann, *Einsatz von Bodycams durch Polizeibeamte, Rechtliche Anforderungen und technische Maßnahmen zum Einsatz der Miniaturkameras* [Implementation of Body Cameras Through Police Officers, Legal Requirements and Technical Measures Regarding the Implementation of Miniature Cameras], NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT - EXTRA [NEW JOURNAL FOR ADMINISTRATIVE LAW-EXTRA] 1424, 1426 (2017).

⁶⁶ See generally *id.*

⁶⁷ *Supra* note 64 at 2.

⁶⁸ Hessisches Gesetz über die öffentliche Sicherheit und Ordnung [HSOG] [Law on Public Safety and Order in Hessen] (promulgated Aug. 23, 2018) §14(6) (Justiz).

⁶⁹ *Supra* note 64 at 11.

The situation is sharply different in America, for the concept of information self-determination is largely lacking. The individual's right with regard to information or privacy is constrained to the protection of private information against public disclosure, and further pitted against the benefits of such disclosure in piercing the opacity in law enforcement (thus enhancing police accountability and transparency).⁷⁰ Under this paradigm, public disclosure of recorded information in general is understood not only as the dutiful act of an "open government,"⁷¹ but also as a fundamental aspect of police body cameras, whose malfunction could defeat the key purposes of such a policy.⁷² In fact, the informational benefits potential of such records are enthusiastically discussed, including but not limited to dragnet surveillance enabled by the aggregation of videos, machine-learning and analysis, officer training, as well as news exposure.⁷³ In addition, rigorous restrictions on the circumstances allowing for filming comparable to the German mode are generally lacking, and the filming locations are by no means restricted to public places. For instance, an empirical research focusing on major municipal police departments in the U.S. conducted in 2015 found that in 25 out of 27 available cases, continuous recording in private places is mandated through general provision. Whereas specific exceptions were existent, still a relatively considerable number of cases mandated or allowed continuous recording in restrooms, nudity searches, hospitals, or homes.⁷⁴ This status quo has given rise to scholarly concerns on striking a balance between privacy and the policy goals central to the installation of police body cameras.⁷⁵

This may be a good point to bring China back into the comparative picture. One should first note that the 2019 Guiding Opinions sets forward a three-fold function of audio-visual recording: providing vivid and convincing evidence, supervising the standardization of law enforcement, and guaranteeing the fulfillment of duty in accordance with the law.⁷⁶ This outlined function or objective indicates that audio-visual recording in China, or the ERS in general,⁷⁷ is closer to the U.S. model in essence. Yet one qualification is necessary: While public exposure is considered fundamental to the U.S. mechanism, the supervision function emphasized in the ERS is primarily realized through performance assessment conducted within the administrative organs rather than public or media pressure. Therefore, goal-fulfillment should constitute no major obstacle to the exclusion of certain audio-visual records from public disclosure under the "open government" doctrine. Further, since the self-determination of information is but a foreign concept to the vast

⁷⁰ *Supra* note 62 at 407–410.

⁷¹ *Id.* at 411.

⁷² *Id.* at 421.

⁷³ *Supra* note 58 at 1392–1399.

⁷⁴ *Supra* note 62 at 419.

⁷⁵ *See generally id.*

⁷⁶ *Supra* note 18 at art. 8.

⁷⁷ *See supra* Section IV(A) for general objectives of the ERS.

majority of Chinese people, transplanting a stringent limitation of data from the German model is not advisable. Yet the basic spirit of respecting individual's right to privacy is laudable, which admittedly has not been brought into full play in the Chinese context. The vast majority of Chinese academic articles on police body cameras are devoted to technical problems which have emerged in practical use, for example the reluctance of police officers to wear body cameras and the excessive cost and impractical functions of these devices.⁷⁸ Only a limited number of recent publications introducing the American regulation touches upon the necessity of enhancing the protection of privacy.⁷⁹ In practice, protection is existent, but arguably not comprehensive. Such protection is concentrated on the application of collected records, *e.g.*, through demanding confidentiality for recordings in which privacy issue may arise,⁸⁰ yet absent in the initial recording. For instance, the 2016 Police Audio-visual Regulation stipulates continuous recording of the entire law enforcement process without singling out privacy-related situations, so the police officers are mandated to record those situations at least from a literal interpretation of the regulations.⁸¹ Adding a bottom-line restriction of recording as regards privacy may be considered to afford better protection. The privacy issue is arguably not specific to police body cameras, but worth considering in the broader context of audio-visual recording, or the ERS as a whole.

V. CONCLUSION

Crystallizing three waves of ministerial and local implementations under the framework of central guidance, the ERS in the Administrative Penalty Law constitutes a reasonably mature system which paints a promising picture for strengthening the protection of concerned parties in the enforcement of administrative penalties. A comparative perspective nevertheless cautions against idealizing the potential benefits and shows its potential negative influence on privacy. Yet to what extent privacy should act as a limiting factor for the nationwide and in-depth implementation of the ERS remains specific to the particular legislative framework of a country and the sentiments of her

⁷⁸ *E.g.*, Liu Jiannan (刘健楠), *Gongan Xianchang Zhifa Jiluyi Shiyong Yanjiu* (公安现场执法记录仪使用研究) [*Research into the Application of Police Body Cameras*], 11 HUBEI JINGGUAN XUEYUAN XUEBAO (湖北警官学院学报) [JOURNAL OF HUBEI POLICE ACADEMY] 20 (2013); Cao Tong (曹通) and Wu Yini (吴旂旒), *Jingyong Zhifa Jiluyi Shiyong Xiaoneng Ji Xiancun Wenti Yanjiu* (警用执法记录仪使用效能及现存问题研究) [*Research into the Functions and Problems of Police Body Cameras*], 5 YUNNAN JINGGUAN XUEYUAN XUEBAO (云南警官学院学报) [JOURNAL OF YUNNAN POLICE ACADEMY] 85 (2013).

⁷⁹ Yang Xue (杨雪) and Bao Han (包涵), *Jingyong Zhifa Jiluyi yu Geren Yinsi zhi Chongtu* (警用执法记录仪与个人隐私之冲突) [*The Conflict Between Police Body Cameras and Individual Privacy*], 3 HUBEI JINGGUAN XUEYUAN XUEBAO (湖北警官学院学报) [JOURNAL OF HUBEI POLICE ACADEMY] 151 (2020); Li Xiaoping (李晓萍), *Meiguo Zhifa Jiluyi Xiangguan Falü Zhidu Tanjiu* (美国执法记录仪相关法律制度探究) [*Research into the Legal Framework of American Polica Body Cameras*], 1 GUIZHOU JINGCHA XUEYUAN XUEBAO (贵州警察学院学报) [JOURNAL OF GUIZHOU POLICE ACADEMY] 12 (2020).

⁸⁰ *Supra* note 19 at art. 17.

⁸¹ *Id.* at art. 3 and art. 6.

people. Apart from extensive information on the ERS, acute readers may as well detect common threads of the Chinese administrative law, including a particular path of development, a keenness on incorporating modern technologies, a determination to draw experiences from other jurisdictions whilst infusing Chinese characteristics, etc. It is hoped that the concrete example of the ERS can facilitate a more grounded understanding of the Chinese administrative law in general.